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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Situation in Cambodia

Report of the Secretary-General

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Introduction

1. In its decision 1992/102, adopted on 21 February 1992 at its forty-eighth session, the Commission on Human Rights affirmed that lasting peace and security in Cambodia, and the full enjoyment by its people of all human rights, including the right to self-determination, were dependent on the effective implementation of the Paris Agreement of October 1991 (see A/46/608 - S/23177), and in particular the holding of free and fair elections. It noted the substantive provisions on human rights in the Agreement and recalled the main features of the mandate of the United Nations Transitional Authority in Cambodia (UNTAC) in regard to human rights and the Commission's responsibility under the Paris Agreement to monitor closely the human rights situation in Cambodia after the end of the transitional period. The Commission, noting that the Centre for Human Rights had begun a programme of human rights information in Cambodia, went on to encourage the Centre to develop that programme throughout Cambodia, in coordination with UNTAC. It also requested the Secretary-General to inform it, at its forty-ninth session, about the human rights activities in Cambodia carried out by UNTAC and by the Centre for Human Rights.

2. Subsequently the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1992/17 of 27 August 1992, affirmed that Cambodia's tragic past required special and concrete measures to assure respect for the human rights and fundamental freedoms of all persons and that the international community had a responsibility to continue to support Cambodia in the field of human rights. After underlining the importance of the reconstruction and rehabilitation of the legal and judicial systems in Cambodia to be undertaken in parallel with human rights advocacy programmes, the Sub-Commission invited the Secretary-General to develop and implement, in collaboration with UNTAC, long-term comprehensive programmes of technical assistance and advisory services which would contribute to a lasting improvement in the enjoyment of human rights and fundamental freedoms in Cambodia. It also invited the Secretary-General to report to the Commission on Human Rights, at its forty-ninth session, on the activities undertaken and the progress made in that field.

3. The present report is submitted in accordance with the requests made by the Commission and the Sub-Commission.

I. BACKGROUND: THE PARIS AGREEMENTS AND HUMAN RIGHTS

4. Pursuant to the Final Act of the Paris Conference on Cambodia held from 21 to 23 October 1991 "in order to achieve an internationally guaranteed comprehensive settlement", three instruments were adopted:

(a) Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, with annexes on the mandate for UNTAC, military matters, elections, repatriation of Cambodian refugees and displaced persons, and the principles for a new Cambodian constitution;

(b) Agreement concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia; and

(c) Declaration on the Rehabilitation and Reconstruction of Cambodia.

5. A principal goal of the United Nations Transitional Authority in Cambodia (UNTAC), the establishment of which is provided for in article 2 of the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, is to ensure a neutral environment in Cambodia during the transitional period to elections, which are scheduled to take place by May 1993. But the same Agreement also makes specific reference, in the preamble, to human rights: "recognizing that Cambodia's tragic recent history requires special measures to assure protection of human rights, and the non-return to the policies and practices of the past ...".

6. Part III of the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict is devoted to human rights and refers specifically to the Universal Declaration of Human Rights and other relevant human rights instruments.

7. In article 15 Cambodia undertakes:

To ensure respect for and observance of human rights and fundamental freedoms in Cambodia;

To support the right of all Cambodian citizens to undertake activities which would promote and protect human rights and fundamental freedoms;

To take effective measures to ensure that the policies and practices of the past shall never be allowed to return;

To adhere to relevant international human rights instruments.

8. Article 16 of the Agreement states that UNTAC shall be responsible during the transitional period for fostering an environment in which respect for human rights shall be ensured, based on the provisions of annex 1, section E. Under these provisions, UNTAC's tasks in the human rights field are:

(a) The development and implementation of a programme of human rights education to promote respect for and understanding of human rights;

(b) General human rights oversight during the transitional period;

(c) The investigation of human rights complaints, and, where appropriate, corrective action.

9. The Agreement further provides that, after the end of the transitional period, and hence of UNTAC's mandate, the United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings annually to the Commission and to the General Assembly (art. 17).

II. THE UNTAC HUMAN RIGHTS COMPONENT

A. Structure

10. The actual Human Rights Component is relatively small. It comprises a staff of 10 professionals in Phnom Penh, divided into 2 units: monitoring and investigation; and training, education and information. In addition to this staff at headquarters, there are provincial human rights officers in each of the 21 provinces of Cambodia.

11. Although it was not originally intended to have provincial officers working exclusively on human rights, the experience of the first few months revealed a real need in this area, and it was finally decided to assign a correspondent of the Human Rights Component to each of the 21 provinces.

12. While the provincial officers report to the Component, they fall administratively under the relevant UNTAC provincial directorate. One officer has been deployed in one of the faction-controlled zones.

13. The relatively "modest" size of the Human Rights Component is partly due to the fact that human rights is seen as integral to the work of the entire UNTAC staff, and not just one element. The Component works closely with other Components of UNTAC and also other United Nations agencies, acting as a catalyst.

B. Activities

14. With the arrival in Phnom Penh on 15 March 1992 of the Secretary-General's Special Representative for Cambodia, UNTAC began its deployment, thereupon absorbing the United Nations Advance Mission in Cambodia (UNAMIC). UNTAC's main human rights activities have been in the following areas:

Investigations of complaints concerning human rights violations and adoption of corrective measures;

Review of prison conditions;

Education, training and information;

Presentation of international human rights instruments to the Supreme National Council with a view to accession;

Review of the judicial and penal system in the light of international human rights standards.

1. Investigations

15. The Human Rights Component has established a mechanism for the receiving of human rights complaints. As of 10 November 1992, the Component had received some 300 complaints at its office in Phnom Penh, and approximately the same number from the provinces. Some of these complaints were handed on by Cambodian human rights groups to UNTAC. They touched on virtually all aspects of life, not simply the run-up to elections.

16. Of these 298 complaints, 118 involved land disputes; 112, harassment and intimidation; 63, wrongful imprisonment; 14, wrongful death; 5, destruction of property; 1, seizure of property; 5, cease-fire violations; and 8, injuries.

17. A total of 161 complaints were taken up either by the Component's own staff or by other Components of UNTAC. Of these, 53 were referred to Civil Administration; 85 to the Civilian Police (CIVPOL); and 6 to the Military; 23 of the complaints were taken up by the Component's provincial human rights officers. Land disputes are handled by Civil Administration and not the Human Rights Component, unless the dispute involves violence, intimidation or other abuses.

18. Where human rights violations have been demonstrated, corrective action has often been taken with the authorities concerned, in some cases going as far as the release of persons arrested or detained and the resignation of the official concerned.

19. Complaints seem to be increasing in number, and they always relate to the same types of violations. There has been an increase of killings, kidnapping and attacks on opposition party offices, as well as alleged politically motivated killings of party members in the provinces. Three incidents which received wide press publicity were directed against the ethnic Vietnamese community. In one incident that was investigated jointly by the Component and CIVPOL, 14 Vietnamese were abducted by armed men on 2 October. Twelve were subsequently found murdered. In another attack on Vietnamese, eight Vietnamese were abducted in Kompong Tom and are believed to have been killed. This case was investigated by the Component and UNTAC military observers.

2. Review of prison conditions

20. The Human Rights Component has also undertaken work in the area of basic prison reform and has managed to have prison conditions improved. Almost all this work has occurred within territory controlled by the State of Cambodia, although human rights officials recently started intensive programmes in the zones controlled by the Khmer People's National Liberation Front (KPNLF) and by the Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique et Coopératif (FUNCINPEC).

21. To date, human rights officers have visited all three major prisons in Phnom Penh, all 21 provincial prisons, most district prisons, and a number of police holding cells at the commune/district level.

22. Prison visits began in June and confirmed most of the concerns that have been raised by international human rights groups. These included overcrowding, the use of shackles, detention in dark cells, and malnutrition. In addition, the system of prison management was exceptionally disorganized - making it even harder for detainees.

23. These concerns were put to the authorities and produced a swift response. A directive ordered all shackles removed from prisoners, and a Prison Control Commission was set up to review the Component's suggestions. The Commission also reviewed the cases of all inmates in the prisons controlled by the municipal police in Phnom Penh. A total of 140 prisoners were released

on 29 August and 2 September from the PJ and T3 prisons. Previously, on 15 May, 108 prisoners, many of them sick or elderly, had been released at UNCTAC's request as a humanitarian gesture on the occasion of Visaka Puja, an important Buddhist festival.

24. The Commission has also rationalized the organization and control of the prison system. UNTAC's Human Rights Component has made clear its view that prisoners who are a threat to public safety or security should not be released, but should be charged and tried.

25. The Component has found that prison conditions have improved measurably since the first visits. Health conditions are better; prison management has been simplified; prisoners are no longer shackled; cells are cleaner, ventilated and have better light.

26. The International Committee of the Red Cross (ICRC) has regular and free access to sick prisoners; the Component has initiated a programme of supplementary feeding in prisons with the ICRC, the World Food Programme and UNTAC's Civil Administration.

27. This dialogue between the Component and the local authorities is seen as constructive and fruitful, although there has been some recent slippage. One major concern continues to be the number of prisoners still awaiting trial, as a result of the shortcomings in the judicial system noted earlier. This underlines the importance of judicial reform and training.

28. The Paris Agreements call for the release of all political prisoners by the factions. Three of the four factions have stated that all political prisoners have been released. The Party of Democratic Kampuchea has stated that it holds no political prisoners, but the Component has been unable to verify this claim.

3. Education, training and information

29. Human rights education was described in the report of the Secretary-General of 19 February 1992 to the Security Council as the "cornerstone of UNTAC's activities in fostering respect for human rights". In light of this, the Component's education work has been conceived quite broadly to cover formal, informal and non-formal education.

30. Formal refers to educational activities within the school system. At the primary and secondary school levels, the Component has produced a set of curricular materials that have been distributed throughout the country for use in the civic education programme.

31. Provincial human rights officers are meeting with teachers at the school level and with staff of regional teacher-training colleges to help them introduce these materials. This arrangement applies to the areas controlled by the State of Cambodia (SoC). In the zones under the control of two of the other factions, the same materials are being used directly by the provincial human rights officers.

32. Human rights are also being introduced into the curriculum of the University of Phnom Penh. A weekly course of four hours began on 27 October at the law school for 210 students, and a lecture series is being organized for the other institutions of higher learning. Human rights is being introduced in specialized courses, i.e. journalism.

33. Informal Education refers to education outside the school system - for example, special groups that are particularly influential in the society. The Component conducts training for three broad categories: (i) officials of the existing administrative structures (police, judges, prosecutors, party officials, administrative officials of various ministries, etc.; (ii) UNTAC staff (civil police, district electoral supervisors, provincial human rights officers and their training assistants, etc.); and (iii) professional or activist groups (human rights associations, women's groups, health professionals, journalists, etc.).

34 Informal education, particularly for more elaborate training activities, aims to reach in particular the human rights associations, justice officials and the police. A set of "modules" has been prepared and distributed to the provincial human rights officers allowing them flexibility in scheduling briefings and training activities. Hundreds of such meetings have taken place in most of the provinces.

35. The content of training and briefings varies depending on the target group. For human rights associations, for example, training has covered the history and content of international human rights standards. Training for defenders in court, for the police and for magistrates focuses on the Provisions relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (see para. 46 et seq.).

36. Non-formal education aims at the public at large through the media. A dozen "dialogues" have been written on human rights themes, performed by Cambodian actors and disseminated in the form of television and radio broadcasts and comic strips. The Component has prepared six television mini-dramas, two television news magazine programmes, numerous interviews for radio, 100,900 leaflets and 25,000 posters. Several news magazines of approximately 20 minutes have been devoted to human rights and "spot" radio announcements of one minute have reminded the public of specific rights and the availability of the investigation team to hear and act on their complaints. Hundreds of thousands of Khmer-language leaflets (explaining what human rights are and where to file complaints) have been distributed.

37. Similar mass distribution is in preparation for a special Khmer version of the Universal Declaration of Human Rights. A poster has been produced giving the same basic human rights message, and other posters are in production on specific human rights themes.

38. Much of this work involves close cooperation with UNTAC's Information/Education Division. But the Component's own information specialists have taken advantage of traditional Khmer cultural mediums - singers, puppets, comics and local artists. A team of Ayai singers is giving 25 performances around the country. A project is in preparation using shadow puppet theatre.

39. A trust fund for the Programme in Human Rights Education for Cambodia has been established to fund training and education projects. These include activities designed to reach the widest possible segments of the population: general population, teachers and students, lawyers, judges and government officials. On 8 October 1992 the Special Representative of the Secretary-General appealed to Governments for over $1.6 million. Pledges have been received for an amount of about $500,000.

4. Accession to international human rights instruments

40. As mentioned above, article 15 of the Paris Agreements contains an undertaking by Cambodia to adhere to international human rights instruments, and this commitment by all the factions gives UNTAC's Human Rights Component a starting-point for its work.

41. The Component has presented the Supreme National Council with seven instruments. The SNC signed the two International Covenants on Human Rights on 20 April. These came into force on 26 August 1992, 90 days after being deposited with the Secretary-General.

42. On 20 September the SNC acceded to the following five international human rights instruments: the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child and the Convention relating to the Status of Refugees and its Protocol.

43. Following the accessions to the instruments, UNTAC has taken two measures to help Cambodia fulfil its obligations. In cooperation with the Centre for Human Rights, it has compiled all seven instruments, together with the two other main human rights instruments to which Cambodia is a party (the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Elimination of All Forms of Racism and Racial Discrimination) and a selection of other instruments. These have been translated by the Cambodia Documentation Centre into Khmer and will be widely disseminated to officials and activists.

44. Plans are also under way to train officials in the rather heavy reporting obligations for States parties to these instruments. Human rights non-governmental organizations will be trained in monitoring government compliance.

5. Judicial and penal reform

45. The judicial system is also a theme of great concern. The judicial structure collapsed completely in 1975. As the Lawyers Committee for Human Rights has pointed out in a paper prepared for the International Symposium on Human Rights in Cambodia held in November/December 1992, in 1979 there were only 10 law graduates (including five judges) left in the country, and respect for the rule of law had disappeared altogether. Even today, some parts of the country lack any system of adjudication whatsoever. Elsewhere, there has been no serious attempt to rebuild the judiciary. The vacuum that this has created has given rise to the police usurping and assuming de facto judicial powers.

Police were under no obligation to report cases, and judges under no obligation to hold court. Even if they ordered a detainee freed, the police could well not heed the order - because there were no contempt provisions. If a detainee came before a judge, the decision was probably already taken. As a result of this situation, throughout the country, the concept of an independent judiciary is still being developed.

46. On 10 September the Supreme National Council adopted a set of Provisions relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period, despite the objections of the Party of Democratic Kampuchea (PDK).

47. These transitional provisions establish procedures for arrest and detention consistent with United Nations standards. They also reform the judiciary to provide for independence of magistrates, the possibility of appeal and conditions of a fair trial. (Judges are to be appointed by the existing administrative structures under the supervision of UNTAC.) In addition, the provisions set out and define 9 crimes, and 26 misdemeanours, with their respective punishments.

48. Law and order and public security generally fall under the purview of Civil Administration, which took the lead in drafting the provisions. The Human Rights Component provided direct advice and input on issues of the rule of law, independence of the judiciary, abuse of police powers, and the rights of the defence.

49. The precise wording of some of the 75 articles is still under review, on the basis of discussions with judges, magistrates and defenders.

50. The provisions mark a major step forward towards creating respect for the rule of law. They also provide the Human Rights Component with a legal yardstick in the administration of justice, including such work as improving conditions in prisons.

51. It is also clear, however, that the new provisions cannot be implemented overnight, particularly when there is such a shortage of trained judges, prosecutors and lawyers. As a result, Civil Administration, CIVPOL and the Human Rights Component have initiated a major programme of training for three categories: judges, defence lawyers/defenders and police. This programme is very much a cooperative effort, with Civil Administration taking the lead in training judges and prosecutors, CIVPOL coordinating the police training, and the Human Rights Component training defenders.

52. The first course for 60 defenders took place between 16 November at the Component's conference room. Each of the factions was invited to send five participants. The PDK declined to reply; all the other factions complied. In addition, each of the four human rights groups provided 10 participants. The goal of these courses is to train people to defend accused even though they may not have legal qualifications. Because of the small number of lawyers in Cambodia, the transitional provisions provide that anyone who has completed a secondary school education can represent an accused person. The accused can also ask a family member to represent them, regardless of educational qualifications.

C. Cooperation with non-governmental organizations

53. Since January 1992, four non-governmental organizations have been established in Cambodia:

(a) ADHOC (Cambodian Human Rights Association), set up at Phnom Penh in January 1992. It publishes a regular newsletter and participates in human rights training programmes in the capital and also in the provinces, where it has established several sections, albeit with difficulty;

(b) Cambodian League for the Promotion and Protection of Human Rights; originally created in Paris, it has had a section in Phnom Penh since July 1992 and is also beginning to establish itself in the provinces;

(c) Human Rights Vigilance of Cambodia, an association which has been set up very recently;

(d) Human Rights and Community Outreach Projects.

54. These associations have scant resources and encounter numerous difficulties in establishing themselves in the provinces, often because they are debarred from doing so by the Government authorities. The Human Rights Component has helped all four with a small administrative grant to cover start-up costs, and with funds to help publications. The groups have regular access to UNTAC videos. The Component has provided facilities for them and will shortly open a small resource centre which will be available for use by these groups.

55. The Human Rights Component also provides ongoing assistance to these associations by organizing training and sensitization courses, taking over the investigation of complaints that they may receive, and supplying them with various United Nations materials, which are gradually being translated into the Khmer language. Teaching materials adapted to Cambodia are also being developed, either separately or jointly. The organizations in turn provide important feedback to the Component about the effectiveness of UNTAC information material and programmes.

56. UNTAC also financed the participation of the four organizations in the International Symposium on Human Rights in Cambodia held in November/December 1992 (see paras. 58-63 below). One of the main goals of the Symposium was to build a network of international and regional support for these and other groups in the period after elections.

57. The Component has set up a working committee with several expatriate non-governmental organizations (Church World Service, Jesuit Refugee Service, International Cooperation for Development and Solidarity, Oxfam, PACT, Cooperation Committee of Cambodia). Others have expressed an interest in joining. The main aim of this committee is to review the options for promoting human rights after elections and assisting future involvement by the United Nations in Cambodia.

D. International Symposium on Human Rights in Cambodia

58. The International Symposium on Human Rights in Cambodia was organized under the auspices of UNTAC's Human Rights Component in Phnom Penh, from 30 November to 2 December 1992. It was the first international conference on human rights to be held in Cambodia. For the first time, representatives of three of the four major Cambodian factions presented their views about human rights publicly, and responded to questions during the public session about the future of human rights in Cambodia.

59. The goal of the Symposium was twofold:

(a) To identify ways in which the international community can provide support to Cambodian human rights institutions and structures, particularly the newly established human rights associations, building on the various activities begun by UNTAC;

(b) To explore specific ways in which the United Nations and other international organizations, international and regional non-governmental organizations and the Cambodian human rights community can best work together to ensure the safeguarding of human rights and fundamental freedoms in Cambodia in the coming years, particularly following elections and UNTAC'S withdrawal from Cambodia.

60. Participants included members of Cambodian non-governmental organizations, international and regional non-governmental organizations, representatives of UNTAC and the Centre for Human Rights, as well as of other international organizations. The representative of the Centre for Human Rights presented a paper entitled "Possible post-UNTAC United Nations roles in support of human rights in Cambodia".

61. The Symposium expressed a strong sense of regional and international solidarity with Cambodian human rights groups and led to several concrete offers of support in the fields of election monitoring, training, education, and measures to improve the functioning of courts, including defenders, and law enforcement consistent with human rights.

62. The Symposium strongly supported the establishment of a continuing United Nations human rights presence in Cambodia after UNTAC leaves. This should have adequate resources and staff, be present throughout the country and have a mandate to monitor the human rights situation, investigate alleged violations, continue human rights training and education and ensure that indigenous human rights groups are able to operate freely and without reprisals.

63. The report of the Symposium, which will be translated into Khmer, is contained in the addendum to the present report of the Secretary-General.

III. THE CENTRE FOR HUMAN RIGHTS

A. Mandate

64. The present mandate of the Centre for Human Rights in Cambodia has its basis in the above-mentioned decision 1992/102 of the United Nations Commission on Human Rights and resolution 1992/17 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. As explained above, there are two main areas of the Centre's action identified by these documents:

(a) Further development of an information programme on human rights, in cooperation with UNTAC;

(b) Development and implementation of long-term comprehensive programmes of technical assistance and advisory services which would contribute to a lasting improvement in the enjoyment of human rights and fundamental freedoms in Cambodia.

B. Activities

1. Information programme

65. The Centre for Human Rights has already started an information programme in cooperation with UNTAC. It has financed the publication of educational materials and the production of audio/visual material. It has provided background documents and literature for the UNTAC programme and arranged for some of the main international human rights instruments to be translated into Khmer and widely distributed to the Cambodian population. As of the writing of this report, the following United Nations instruments in the field of human rights had been translated into the Khmer language: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Code of Conduct for Law Enforcement Officials; the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles on the Independence of the Judiciary; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees. In addition, the publication of the Centre for Human Rights entitled ABC Teaching Human Rights has now been translated into Khmer.

66. The Centre is currently contributing to the financing of the Programme on Human Rights Training and Education for Cambodia recently elaborated by UNTAC's Human Rights Component (see para.39).

2. Mission to Cambodia

67. In order to identify further ways to effectively promote respect for human rights in the country, a mission from the Centre visited Cambodia from 11 to 17 October 1992. The delegation from the Centre was composed of a consultant and a staff member.

68. The mission was arranged following the invitation addressed to the Centre by the Special Representative of the Secretary-General for Cambodia, with the aim of strengthening cooperation between the Centre and UNTAC in various areas. Based on the elements suggested by the Special Representative and within the framework of the Centre's mandate, as defined in the documents mentioned, the mission was designed to establish and facilitate such cooperation, particularly in the following fields: training, information and education regarding human rights; appointment of a Special Rapporteur on Cambodia of the Commission on Human Rights, as envisaged in the Paris Agreements; relevance of UNTAC's mandate in relation to the World Conference on Human Rights; and expert assistance in the preparation of the new Cambodian Constitution. A further purpose was to examine ways of ensuring a continuing United Nations human rights presence in Cambodia after the elections and the end of UNTAC's mandate.

69. The programme for the mission took place entirely in the capital, with the exception of a day spent visiting Kompong Speu, one of Cambodia's 21 provinces.

70. At Phnom Penh, the Centre's delegation met the Director of the Human Rights Component of UNTAC, as well as the officials in charge of the various aspects of UNTAC's programme/mandate in the human rights field, who provided detailed explanations of their respective activities: education, training and information; investigations, monitoring of prison conditions; and assistance in legislative reform.

71. The Centre's delegation also met the Deputy to the Secretary-General's Special Representative in Cambodia, the Legal Counsel of UNTAC, the Directors of the Civil Administration and Electoral Components, and the Director of UNTAC's Information/Education Division.

72. Meetings were held with the representatives of a number of international organizations in Phnom Penh, namely: UNICEF, UNESCO, UNDP, UNHCR and ICRC.

73. The delegation also met:

(a) Members of the four local non-governmental organizations recently established in Cambodia: the Cambodian League for Human Rights (LICADHO), the Cambodian Human Rights Association (ADHOC), Human Rights Vigilance of Cambodia, and the Cambodia Documentation Centre;

(b) Members of the international non-governmental organizations currently in Cambodia (these are mostly organizations active in the development field).

74. In addition, the leaders of three Cambodian political factions also agreed to meet the Centre's delegation: the Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique et Coopératif (FUNCINPEC), the State of Cambodia (SoC) and the Khmer People's National Liberation Front (KPNLF).

75. A visit to the T3 prison, Phnom Penh's largest, was included in the programme, and it was possible to talk to the prisoners. On the other hand, access to the PJ prison was prohibited by the prison authorities. The Centre's representatives also visited a former execution camp some 40 km away from Phnom Penh.

76. In Kompong Speu province, the delegation met:

(a) The Provincial Director of the Civil Administration and his staff, the human rights officer, the Commander and other officers of the UNTAC Civilian Police the Director of the Electoral Component and his staff, and UNTAC military observers;

(b) The Provincial Governor and other representatives of the provincial authorities.

Visits were made to the provincial prison and a former execution camp.

77. A report was prepared after the mission. It contains information on UNTAC's activities in the field of human rights; an overview of the human rights situation in Cambodia; and, most importantly, proposals for short- and long-term activities to be undertaken in Cambodia by the Centre for Human Rights. The conclusions and recommendations formulated in the report are included in chapter IV of the present report.

3. Summary or arbitrary executions

78. The Special Rapporteur on extrajudicial, arbitrary and summary executions has requested information from the Government of Cambodia and from the Special Representative of the Secretary-General for Cambodia about facts falling under his mandate.

4. World Conference on Human Rights

79. Through the Centre, UNTAC has been requested to prepare a report on its human rights activities for the World Conference on Human Rights to be held in Vienna in June 1993.

IV. CONCLUSIONS

A. General concluding observations

80. The situation in Cambodia at the present time is extremely delicate and there are continuing grounds for serious concern: the attitude of the Party of Democratic Kampuchea, which has so far taken no part in the electoral process and has not allowed UNTAC into areas under its control; repeated violations of the cease-fire by a number of factions involved; the persistence

of difficult human rights situations; the slowness in reconstructing an operational legal system; and the endurance of discriminatory attitudes towards minorities, particularly Vietnamese - to name but a few such grounds.

81. Real progress has been made, with a very marked decline in the number of political assassinations, the release of political prisoners and prisoners of war, and an appreciable improvement in enjoyment of freedom of expression and association which has facilitated the emergence of human rights associations and new political parties. New institutions are being or have already been established. Legislation likely to facilitate democratization in the country has been adopted, and other norms are being prepared. As to electoral matters, UNTAC drew up and published, on 12 August 1992, an electoral law for the conduct of free and fair elections to a Constituent Assembly for Cambodia, in consultation with the Supreme National Council.

82. In the human rights field, it is clear that the progress achieved to date is due essentially to the presence and activity of UNTAC, and more especially its Human Rights Component. In this progress of democratization, the Human Rights Component has been not only the catalyst but also the institution guaranteeing such a process. A long-term United Nations presence is essential to enable civil society, which is beginning to conquer fear and to organize itself to take over and consolidate the gains. An outstanding training, education and monitoring effort has already been and is continuing to be made. However, it is clear that, in the few months remaining to it, the Human Rights Component will have neither the time nor the means to reach all sectors of society. It becomes obvious that the role played by the Human Rights Component cannot be terminated with the transitional period accorded in the Paris Agreement to UNTAC.

B. United Nations role in post-UNTAC Cambodia

83. It is clear, also, that the role and responsibility of the international community in the process of general reconstruction of Cambodia will continue after the transitional period and that the efforts undertaken to date by UNTAC to foster an environment in which respect for human rights is ensured need to be followed up in order to achieve a lasting improvement in the observance of human rights in Cambodia. Such follow-up can only be achieved through continuous and effective monitoring of the human rights situation in the country, as well as the continuation of training and information activities. Although the Paris Agreement contemplates the appointment by the United Nations Commission on Human Rights of a special rapporteur to monitor the situation in Cambodia, it appears that this mechanism, as well as the provision of traditional forms of technical assistance in the field of human rights, will not be sufficient to continue the process of democratization and to guarantee on a daily basis to Cambodian citizens and organizations their basic rights.

84. It is important to recall resolution 1992/17 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, where it affirms that "Cambodia's tragic past requires special and concrete measures to assure respect for the human rights and fundamental freedoms of all persons" and that "the international community has a responsibility to continue to support

Cambodia in the field of human rights". Because of the exceptional nature of the Cambodian situation makes it essential for the international community to seek new and original solutions.

85. There is a general consensus among Cambodian organizations, international non-governmental organizations and international organizations currently working in Cambodia and UNTAC members that, in order to maintain and strengthen the results achieved so far in the field of human rights in the country, a permanent presence of the United Nations, through its main human rights body - the Centre for Human Rights - is indispensable.

C. Proposals for future United Nations action in Cambodia

86. In the light of these considerations, the following measures are proposed as essential to effectively continue the international action in the field of human rights in Cambodia. They lead to a comprehensive approach to the protection and promotion of human rights in Cambodia, which is the only approach designed to meet the exceptional human rights needs of this country. It combines:

(a) Technical assistance activities which are traditionally carried out by the Centre for Human Rights under its advisory services and technical assistance programme;

(b) Traditional United Nations monitoring activity in the field of human rights;

(c) Innovative mechanisms mainly consisting of an operational presence of the Centre for Human Rights in Cambodia.

87. Some of the activities recommended should already be undertaken by the Centre during the transitional period and continued after the expiry of UNTAC's mandate:

(a) Training of judges and lawyers/defenders in the international principles of the administration of justice. The desperate need for activities aimed at supporting the establishment of an independent and effective judiciary system consistent with international human rights standards in Cambodia has been repeatedly stressed above;

(b) Training of police and military personnel, both Cambodian and UNTAC, in human rights and criminal justice, investigation techniques, with particular regard to cases of grave human rights violations, and other relevant subjects;

(c) Training of members of Cambodian non-governmental organizations on United Nations procedures. It is essential that these organizations become acquainted with the existing international mechanisms for the protection of human rights, including the treaty bodies, to the effective functioning of which they are called upon to contribute. This will be particularly important in the post-UNTAC era;

(d) Production and provision of information and education materials on human rights, and translation of international instruments and publications;

(e) Provision of fellowships to Cambodian government officials, lawyers and human rights activists;

(f) Advisory services on the drafting of the new Constitution. It is highly desirable that the creation of a national institution for the promotion and protection of human rights (Ombudsman, Human Rights Procurator, or any other form) be provided for in the Constitution;

(g) Training of members of Cambodian human rights associations and UNTAC staff on the principles of free and fair elections and election monitoring;

(h) Specialized training in minorities and women's issues;

(i) Assistance in the elaboration of human rights curricula for primary and secondary schools and universities; provision of lecturers and training of teachers.

88. Many of the above-mentioned activities will have to be implemented in cooperation with other United Nations bodies (for instance the Crime Prevention and Criminal Justice Branch and the Division for the Advancement of Women). During the International Symposium on Human Rights in Cambodia several international non-governmental organizations offered their concrete support and their expertise in the organization of some of the listed activities.

89. It is also recommended that the Commission on Human Rights:

(a) Appoint a Special Rapporteur on Cambodia, as envisaged in the Paris Agreements. Her/his mandate would be to review and monitor the situation of human rights in Cambodia. The commission's Special Rapporteurs on torture and extrajudicial summary and arbitrary executions, the Secretary-General's Representative on internally displaced persons and the Working Group on Arbitrary Detention could be requested to provide her/him with ongoing cooperation, assistance and findings and to accompany the Special Rapporteur in visiting Cambodia if he/she should so request. In addition, her/his mandate should also include the review of education, information and training activities, recommendations of technical assistance programmes in the field of human rights, as well as the assistance - in its development and functioning - to the national institution established pursuant to constitutional provisions which will be responsible for the protection and promotion of human rights;

(b) Establish an operational presence of the Centre for Human Rights in Cambodia, which will ensure a continuing human rights presence in the country after UNTAC leaves and will take over UNTAC's Human Rights Component functions. This structure, with adequate resources and staff, would assist the Special Rapporteur in monitoring human rights violations and promote necessary actions; continue human rights training and education; serve as a documentation centre for the use of non-governmental organizations, government officials and the public at large; oversee the implementation of advisory

services and technical assistance activities; assist the new Government in meeting its obligations under the international human rights instruments to which it is a party; and collaborate with non-governmental organizations and ensure that they can operate freely.

90. Finally, given the uniqueness of the Cambodian experience in the field of human rights, it is highly important that its findings and achievements are reported comprehensively to the World Conference on Human Rights in June 1993. It is particularly important that a representative of UNTAC illustrate the development of the mission and the importance of a mandate which gives priority to human rights in a peace-making process.

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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report of the International Symposium on Human Rights in Cambodia

(30 November - 2 December 1992)

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Summary

1. The International Symposium on Human Rights in Cambodia took place from 30 November to 2 December 1992 in Phnom Penh under the auspices of the Human Rights Component of the United Nations Transitional Authority in Cambodia (UNTAC). Its goal was to bring together national, regional and international human rights bodies to build a foundation for the protection and promotion of human rights, particularly following elections and UNTAC's withdrawal from Cambodia.

2. The Symposium expressed deep concern about serious continuing human rights violations in Cambodia, and urged UNTAC to intensify efforts to take corrective action with respect to specific violations, the general climate of fear and the creation of a neutral political environment.

3. The Symposium expressed a strong sense of regional and international solidarity with Cambodian human rights groups.

4. The Symposium generated a highly successful dialogue and launched what participants expect will be a fruitful long-term relationship between the Cambodian groups and their regional and international partners. It discussed ways of helping the groups to participate in regional human rights activities, including the regional preparatory meeting of the World Conference on Human Rights.

5. For the first time, representatives of three of the four major Cambodian political factions presented their views about human rights and responded to questions during the public session about the future of human rights in Cambodia. All three expressed support for local human rights groups. Inter alia, they also proposed the establishment of a permanent human rights information centre and the drafting of human rights provisions for inclusion in the new Constitution. One supported a United Nations human rights presence after the elections.

6. The Symposium strongly supported the establishment of a continuing United Nations human rights presence in Cambodia after UNTAC leaves. This should have adequate resources and staff, be present throughout the country and have a mandate to monitor the human rights situation, investigate alleged violations, continue human rights training and education and ensure that indigenous human rights groups are able to operate freely and without reprisals.

Proposals

7. The Symposium led to several concrete offers of support in the fields of election monitoring, training, education and measures to improve the functioning of courts, including defenders, and law enforcement consistent with human rights. Many of these offers came from Asian human rights groups. While several have yet to be finalized and confirmed, these offers could result in:

(a) International monitors assisting Cambodian human rights groups in the provinces, and serving as a form of protection by their presence;

(b) Training Cambodian judges and defenders;

(c) Training local human rights groups in the use of United Nations mechanisms and the role that NGOs can play in the work of the treaty monitoring bodies;

(d) Assisting Cambodian human rights groups to attend the 1993 session of the United Nations Commission on Human Rights in Geneva;

(e) Sending a regional expert to train local Cambodian human rights groups in reporting and documenting human rights violations;

(f) Helping to train Cambodian human rights groups to monitor the upcoming elections;

(g) Undertaking a study of ethnic minorities in Cambodia;

(h) The United Nations Centre for Human Rights supporting a range of issues, including training courses for police and government officials under the Centre's programme of advisory services and technical assistance.

8. In discussing the need for a United Nations human rights presence post-UNTAC, some speakers felt this could be facilitated by the Centre for Human Rights establishing an operational presence in Cambodia.

9. The Special Representative of the Secretary-General, Mr. Yasushi Akashi, in his opening statement reiterated support for a Special Rapporteur on Cambodia - a possibility envisaged in the Paris Accords. The Special Rapporteur would need support and input from any continued United Nations presence.

10. In their joint final presentation, Cambodian human rights groups welcomed the expressions of support and requested a second human rights symposium, to take place prior to elections. During the Symposium, one group also proposed that a conference on human rights take place in Cambodia each year.

I. INTRODUCTION

11. The International Symposium on Human Rights in Cambodia was the first United Nations-sponsored international conference on human rights to be held in Cambodia. Given Cambodia's tragic past, it was bound to have special significance.

12. The Symposium began a dialogue between the international human rights movement and Cambodian human rights groups, all four of which have been established in the past year. This dialogue may set in motion the creation of mechanisms to promote and protect human rights in Cambodia when UNTAC leaves after elections in 1993, and also support the Cambodian groups as they develop their activities.

13. The need for some form of protection, even while UNTAC is still present, was one of the Symposium's dominant themes. Delegates heard vivid first-hand accounts of the risks and pressures that face their Cambodian colleagues. Ms. Srey Chan Phallarah, from the youngest group (Human Rights and Community Outreach Projects), said that four of her brothers and sisters had been killed between 1975 and 1979, and another brother jailed between 1980 and 1988, accused of being a member of an opposition party. Mr. Thun Saray and Mr. Khay Matoury, representing the Cambodian Human Rights Association (ADHOC), have been jailed for their beliefs. Mr. Kem Sokha (Human Rights Vigilance of Cambodia) said his organization was receiving complaints of harassment and abuse by local authorities. Mrs. Kek Galabru (Ligue cambodgienne pour la defense et la promotion des droits de l'homme - LICADHO) said her group was meeting resistance from the authorities in establishing provincial branches.

14. In one of the closing statements, a representative of the Khmer Students Association pointed out that the human rights movement is being squeezed by an increasingly polarized political environment.

15. Several participants pointed out that if the situation deteriorates still further, human rights work could become even more risky. In this context, the support and encouragement of the outside world, particularly human rights groups from the Asian region, is critical. As Mr. Sokha put it, "If we lose our lives, at least people know what we have done."

16. The Symposium responded with advice and encouragement. Professor Yash Gai (Hong Kong University), summed up the general mood when he described the Symposium as "most moving". There were many expressions of solidarity, and concrete suggestions.

17. Several speakers expressed concern at attacks against the ethnic Vietnamese minority, and pointed out that racial invective is incompatible with human rights standards. It was also noted that the Vietnamese problem is linked to Vietnamese immigration into Cambodia. UNTAC's human rights officials appealed to the Cambodian human rights groups to help ensure that this highly controversial issue is dealt with through the processes of law, not prejudice.

18. Regional participants from Hong Kong, Malaysia, the Philippines, Sri Lanka and Thailand attempted to place the work of the newly formed Cambodian Groups in a regional context. Recalling her long campaign against authoritarianism, Ms. Haydee Yorac (Electoral Commissioner, Philippines) had one word of advice: "persevere". Ms. Radhika Coomaraswamy (International Centre for Ethnic Studies, Sri Lanka), reminded the Cambodians that they did not have a monopoly on suffering, and that this too should give them a sense of solidarity.

19. The Symposium opened with a reading from the writings of Ms. Aung San Suu Kyi, the Nobel Peace Prize Winner who went on a hunger strike during the conference and is under house arrest in Myanmar. She has become an inspiration and a symbol of the courage of Asia's human rights movement. The Symposium called for her release, as did two Cambodian factions who addressed the opening session.

20. Important as it may be to encourage links between the Cambodian groups and the international human rights community, some participants also noted the broader context, and the fact that UNTAC's human rights formula breaks new ground in terms of structure and mandate.

21. UNTAC officials explained that UNTAC has unprecedented authority in Cambodia during the transitional period to elections. The Human Rights Component (one of several UNTAC components) can investigate abuses and call for "corrective action" including the dismissal of officials. It works with other partners in UNTAC - in particular Civilian Police (CIVPOL), whose task is to supervise Cambodian police, and Civil Administration, which has "direct control" over five key areas, one of them public security.

22. UNTAC officials expressed the hope that this innovative approach can stimulate and expand the United Nations work in human rights at a time when there is growing debate about precedents for human rights protection in the context of peace-making. At the same time, many speakers argued that the actual implementation of UNTAC's human rights mandate could be toughened and made more effective.

23. Several speakers, including Mr. Akashi, also called for the establishment of a Special Rapporteur, as suggested in the Paris Accords, and for the Centre for Human Rights to establish an operational presence in Cambodia after elections.

24. Mr. Akashi also used the occasion of the Symposium to reiterate the need for support for the US$ 1,670 million appeal for funds for human rights training and education in Cambodia that he had launched to donor Governments in October.

II. GOALS AND OBJECTIVES

25. Mr. Akashi and the Director of UNTAC's Human Rights Component, Mr. Dennis McNamara, explained in opening statements that UNTAC's human rights mandate is to prevent a return to the gross human rights violations that had characterized Cambodia's recent past, and to help establish a neutral political environment in which free and fair elections could take place.

26. Several speakers agreed that in the short term, this means curbing abuses before elections, which are scheduled for May 1993. Mr. Akashi expressed concern at the spate of attacks against opposition parties - eight in November alone. The Cambodian human rights groups confirmed that abuses are increasing. In the opening session, Mr. McNamara said that there has to be a certain minimal level of respect for human rights before elections can be held. Given this context, a main goal of the Symposium was to support and assist Cambodian human rights groups.

27. UNTAC has launched an ambitious programme to train and assist the Cambodian human rights groups, disseminate human rights material and education and train prosecutors, defenders and judges during and through the elections. Mr. McNamara described education as the "cornerstone" of UNTAC's human rights mandate.

28. Looking to the long term, the Symposium began to plan for the time when UNTAC would leave Cambodia. The aim was to set in place the beginning of an international coalition that could tap into the expertise of regional human rights groups and draw in the United Nations human rights bodies.

29. The first part of this report looks at the challenges before elections take place. The second part looks at the longer-term perspective. The report will refer, where relevant, to background papers that were prepared for the Symposium as well as to the debate.

III. THE SHORT TERM: PRE-ELECTIONS

A. Human rights in the Cambodian context

30. Given Cambodia's tragic past, it is easy to assume that human rights are "alien" to Cambodia. The Symposium was unwilling to accept this, even though many speakers agreed that structures and attitudes had evolved that were inimical to human rights. Professor David Chandler (Monash University) said that Cambodian society was traditionally hierarchical - a society of commanders and commanded. Victims traditionally had no voice, let alone redress, and "horizontal" human rights groups were viewed as mischief-makers because they challenged the prerogatives of those who ruled. Democracy, and the emergence of a human rights movement, offered the best hope of changing this orientation.

31. Mr. Sokha observed that the personality of Khmer society is generally one of dependence. "The Khmer people are generally cautious about undertaking initiatives, expressing views, or interacting freely and openly. Our recent past, oppressive beyond human endurance, has consolidated the Khmer personality into obedience and fear."

B. The Cambodian political factions

32. Three of Cambodia's four political factions, which are all contesting elections (FUNCINPEC, KPNLF, SoC) participated in the opening session. After their statements, they agreed to take questions from the floor - an unusual gesture. They were questioned closely about the recent spate of attacks on opposition party offices, and their attitude towards human rights.

33. All expressed support for human rights and the local Cambodian groups, and welcomed the prospect of greater involvement by foreign NGOs. Mr. Khieu Kanharith, Vice Minister in the Council of Ministers (SoC), made several proposals for the creation of independent human rights structures. These included a human rights information centre and a Cambodian Committee for Human Rights, which he said could be under the aegis of the Government, parliament, or independent.

34. Mr. Ieng Mouly (Vice-President, Buddhist Liberal Democratic Party) called for human rights provisions to be built into Cambodia's new constitution and supported the idea of an ombudsman. He also urged foreign NGOs to set up a joint office in Phnom Penh, and urged a "big operational" United Nations human rights presence in Cambodia after elections.

C. Current violations

35. A background UNTAC paper noted that UNTAC's Human Rights Component has received some 300 complaints in Phnom Penh since March, and a similar number in the provinces. Some of these complaints were handed on by Cambodian human rights groups to UNTAC; 112 involved harassment and intimidation and 63 involved wrongful imprisonment while 118 resulted from land disputes. In addition, 27 Vietnamese had been abducted and killed in three separate attacks.

1. Structural causes

36. Many of the human rights violations stem from attitudes and institutional structures resulting from years of violence and abuse. Mr. Basil Fernando, Chief, Monitoring and Investigations Unit, UNTAC, explained that the first problem is fear. Cambodians, he said, are afraid to even admit their relatives might be dead, or in jail. Mr. Fernando also talked of the many (illegitimate) pressures that are brought to bear on individuals by the commune. What Cambodia lacked, he said, was a sense of "community".

37. Many participants agreed that one of the basic structural problems was Cambodia's judicial system, which has failed to instil confidence in Cambodians. Mr. Fernando explained that a critical problem in the current dysfunctional legal system is that the police have assumed de facto judicial powers, exercised through administrative detention. This was why one provincial court only met 14 times in 8 months. If a detainee came before a judge, the decision was probably already taken: "First the verdict, then the trial."

38. Few complaints were lodged against the system, because Cambodians had so little confidence in its remedies. In practice, police were under no obligation to report and prosecute cases, and judges under no obligation to hold court. Even if they ordered a detainee freed, the police would probably not heed the order - because there are no contempt provisions. This further underlined the helplessness of the judiciary vis-à-vis the police.

39. There was thus little point in calling for detainees to be tried, when a trial merely rubber-stamped illegal detention. What was needed, said Mr. Fernando, was a thorough overhaul of the system, and an effort to address the deep-rooted psychological and political problems.

40. Several speakers agreed with Professor Ghai that this would not be served solely by transplanting sophisticated "Western structures" on Cambodia, and that UNTAC should draw on alternative, village-based approaches (e.g. to conflict resolution).

41. At the same time, there was agreement that a start must be made in creating an independent judiciary. Mr. Jim Ross (Lawyers Committee for Human Rights) observed in a background paper that this had meant starting from scratch - there were only 10 law graduates left in the country in 1979. Both in his paper and in an oral presentation, Mr. Ross explained why an independent judiciary matters to human rights: it protects the rights of

individuals; it upholds the Constitution; it could lead to the prosecuting of corrupt officials. He then suggested eight lessons to be followed in reforming the judiciary. These ranged from prohibiting any kind of special court, to ensuring adequate funding for the salaries of judges and court staff. Mr. Ross urged UNTAC to move fast, and not wait until it came close to elections. He supported the idea of an UNTAC special prosecutor, and noted that outside human rights investigating teams could also keep the spotlight on the judiciary.

42. Mr. Fernando and Mr. Stephen Marks (Chief, Education, Training and Information Unit, UNTAC) both argued that UNTAC has made an important start by drafting an interim penal and judicial code "Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period" and in initiating a training course for police, magistrates (judges and prosecutors) and defenders. They said there was much that international NGOs with specialist skills could contribute, by way of training. But they also urged that training should be practical and supplement classroom teaching with hands-on experience of the courtroom. The provision which allows foreign lawyers to practise in Cambodia could be used to involve foreign lawyers in this training as well as in defending accused persons.

43. Mr. Param Cumaraswamy (International Commission of Jurists) and Mr. Reed Brody (International Human Rights Law Group) both expressed interest in training. Mr. Cumaraswamy said his colleagues might visit Cambodia and advise Cambodian defenders/lawyers on how to establish a Bar Association. Professor Ghai said that UNTAC should review laws and repeal any unjust laws, to ensure they are not absorbed by the new Government. Several speakers said that NGOs could help with advice on the drafting of the new Constitution.

2. Treatment of detainees

44. Mr. McNamara said that UNTAC's Human Rights Component had worked hard to improve prison conditions, with some success. A background paper notes that the authorities have established a Prison Control Commission, rationalized the prison system, ordered the removal of shackles and released some prisoners. But Mr. McNamara also observed that there had been some slippage recently, and that much still needs to be done.

45. Ms. Yorac drew comparisons with the Philippines. She said that although the Philippines enjoyed a long tradition of respect for law, the doctrine of National Security was still dominant. This opened the way to abuses such as the denial of bail and incommunicado detention. She suggested that there were lessons that Cambodia could learn from the Philippines: (i) the importance of training police; (ii) an activist Supreme Court, accessible to petitions; and (iii) the recruitment of human rights lawyers. She thought that a human rights court with powers of enforcement should be considered, and she observed that the root cause of violations was the hostility between the factions. It was crucial to keep them talking to each other.

46. Ms. Sunila Abeyesekera (INFORM) said that experience in Sri Lanka had underlined the value of trying to draw up a list of detainees, and also places of detention. This brought relatives of detainees together and gave them a common purpose - even if it produced no concrete results. This helped to empower the relatives. The actual information was also essential when turning abroad for support.

47. Mr. Marco Altherr (International Committee of the Red Cross) said that the information from families was the most important source of information about the whereabouts and conditions of detainees. Whereas a prisoner's political motives could be questioned, a "family's link could never be denied". The ICRC was given responsibility for prisoner release under the Paris Accords, and he urged the Cambodian groups to put families of detainees in touch with the ICRC.

3. Discrimination against minorities

48. The recent attacks against the Vietnamese in Cambodia were commented upon by Ms. Coomaraswamy. She observed that very few societies that were troubled by ethnic disputes were able to solve them from within, and that UNTAC had a unique opportunity. Specifically, she urged that UNTAC: (i) encourage a dialogue between Viet Nam and Cambodia; (ii) write the protection of minorities into the new Constitution; and (iii) consider using local village methods to build bridges between ethnic communities, perhaps using Buddhist monks. This had been tried in Sri Lanka with some success.

49. She also expanded the notion of ethnic conflict and suggested that UNTAC itself could be accused of being culturally insensitive. If UNTAC failed to bring peace to Cambodia through elections, and angered sensitivities in the process, it could be "demonized" - something that could damage the entire United Nations. She also suggested that her Centre might prepare a study on the problem of ethnic minorities in Cambodia.

50. Mr. McNamara said that UNTAC was proposing that the SoC set up a technical committee to look at the question of immigration to Cambodia, even though some felt this should be handled by the next Cambodian Government. But he also pointed out that there had been no complaints as such from Vietnamese, and that the current violence appeared to be politically motivated. An important response to this was to improve UNTAC's capacity to investigate and take corrective action.

51. The representatives of ADHOC and Vigilance pointed out that the attitude of Cambodians towards the Vietnamese stems from deep historical grievances, and that there was widespread concern at uncontrolled immigration from Viet Nam. Mr. McNamara appealed to all groups to support UNTAC's efforts, and said that whatever the concerns about the Vietnamese presence, they had to be expressed through legal channels, not inflammatory incitement to hatred.

D. UNTAC - the Human Rights Component and its mandate for corrective action

52. UNTAC's background document explained that the Human Rights Component has a small staff of 10 professionals in Phnom Penh and a provincial human rights officer in each of the 21 provinces. It has a mandate to investigate abuses and can suggest "corrective action". Working in close conjunction with other components of UNTAC gives it additional powers of control.

53. All four Cambodian human rights groups expressed concern that UNTAC has yet to create a neutral political environment, and that peace is still some distance away. But they also expressed gratitude for the work of UNTAC's Human Rights Component, and agreed that the Paris Accords had given Cambodia a chance to break the cycle of violence and start to make the transition to democracy.

54. One underlying theme was concern at UNTAC's weak enforcement of its mandate. This, said speakers, was hindering UNTAC's ability to create a neutral political environment in the run-up to elections, and hence possibly even threatening the holding of elections. It was also giving an impression of impunity to officials.

55. Mr. McNamara explained that under its mandate to pursue "corrective action" the Component could use a variety of methods. It makes recommendations to the Special Representative of the Secretary-General. In one example, in April, villagers were killed after a land dispute. Mr. Akashi protested, and the villagers received compensation. In one current case, Mr. Akashi has recommended the dismissal of a police official who was seen beating a detainee by six witnesses. This is seen as an important test-case: so far it has not been resolved.

56. Another option was to ask for an investigation by the existing authorities. The Component could make its own recommendations, for instance, that shackles be removed in prisons. (This order has been largely complied with.) Finally, the Component can work with other partners in UNTAC, particularly the Civil Administration, whose mandate is to exercise "direct control" over five areas.

E. Cambodian human rights groups

57. The main goal of the Symposium, as explained above, was to allow Cambodian human rights groups the opportunity to begin a dialogue with their international partners, and start building a network of regional and international support. The Cambodians seized the opportunity. There were many poignant stories about individual members, and examples of the growing pressures they face.

58. Although ADHOC and LICADHO have already acquired an international reputation, all of the groups were established within the last year, and one still runs out of a private home. The Cambodian representatives stressed

repeatedly their lack of resources and expertise, and the need for training and support. "People don't know their rights", said Mr. Sokha from Vigilance. "They don't know why they are arrested, nor why they are released."

59. Three of the four groups said they favoured holding elections as scheduled, even though they also agreed that UNTAC has yet to create a truly neutral environment.

60. The key question is probably how the groups see their role in the months ahead as UNTAC prepares to leave. Most said that they want to build up their network and concentrate on education and dissemination. For LICADHO, the priority is still expanding membership, particularly into the provinces. Mrs. Galabru said that the group has been prevented from opening offices in some provinces. She called for more training material and information, and trainers. She also said that LICADHO favoured establishing a human rights think-tank that could involve Cambodians as well as foreign supporters.

61. The representatives of ADHOC and Vigilance both said they received complaints and passed them on to UNTAC, abuses by local officials, acts of violence and, recently, the discovery of an undisclosed detention centre. Any follow-up, however, is left to UNTAC.

62. But time is not on their side, and many felt that they will have to move to investigating in the near future. With this, the risks will increase. The representative of the Khmer Students Association said that the authorities had been inconsistent in encouraging them to protest some issues, but harshly repressing demonstrations on others.

63. The groups accept that they will face dangers as they move from information to investigation. Mr. Sokha gave an example of a homeowner who was evicted by the district chief. He was afraid to protest to the police - or the court, which was in the pay of the district officials - and the victim's family was forced to leave. Investigating this kind of case involves clear risk.

64. Mr. Saray of ADHOC said that while his group was happy to alert UNTAC to violations (as it had done in the case of a secret detention centre), it relied on UNTAC to follow-up and investigate. The risks increased in remote rural areas. Protection thus becomes a priority. "I am drowning. I need someone to throw me a rope", said Mr. Sokha.

65. Speaker after speaker agreed that a protective network of international NGOs was needed, particularly if the climate continued to deteriorate. Mr. David Hawk (Cambodia Documentation Centre) and Professor Gothom Arya (Civil Liberties Union, Thailand) both noted that demobilization has not gone according to plan, and that the Khmer Rouge remained hostile. The immediate political future remained unclear.

66. The Cambodian groups appealed for foreign observers to be stationed in Cambodia, particularly in the provinces, to help their work and also afford some degree of safety. The Symposium did not produce any offers as such, but did begin to examine possibilities.

67. There was discussion about using the UNTAC network of provincial human rights officers in a different form once UNTAC leaves. Mr. Brody said that his group had placed observers in Romania. The Peace Brigades, which have monitors living with human rights activists in Sri Lanka and Guatemala, was also mentioned.

F. Election monitoring

68. There was a clear division of views about the relevance of election monitoring to human rights before and during the forthcoming elections, both among Cambodian groups and their international colleagues. Mr. Brody opened the discussion by explaining that election monitoring can do more than simply identify electoral fraud: it can empower communities and train human rights groups for other human rights tasks. This was echoed by several other speakers, including Ms. Yorac and Senator Raul Roco (Inter-Parliamentary Union) from the Philippines, and Professor Arya from Thailand (which has been through two elections in one year). All pointed out that monitoring elections was an important process of empowerment and that it gave the election results wider acceptability. Mr. Jose Gomez del Prado (United Nations Centre for Human Rights) stressed that election monitoring also allowed other rights - freedom of association rights, assembly, etc. - to be protected along the way.

69. Mr. Reginald Austin (Director, UNTAC Electoral Component) agreed with this. He pointed out that UNTAC had to operate in a complex restrictive political environment, and could not do everything. The more foreign monitors, the better. He also warned that the transition to pluralism would mean a loss of power for some, and that this might be resented. Among the Cambodian groups, LICADHO was eager to engage in election monitoring, and asked for outside help in training.

70. The second, very different, view was that it was unrealistic to expect Cambodians to mobilize thousands of poll-watchers and monitors, given the country's lack of human resources. There were also doubts that this kind of grass-roots civic action was appropriate for human rights groups, and that perhaps they would do better to concentrate their energies on monitoring, information and investigations. Representatives from ADHOC made the point that the priority was to establish peace rather than monitor elections.

71. A working group met outside the formal session, and drafted a project proposal to create a task force of election monitors involving the Cambodian groups. This will now be included in the Component's work plan.

IV. THE LONG TERM POST-UNTAC: BUILDING THE COALITION

72. Mr. Marks referred to the Component's training programme. He said that the mandate given to the Component for training was broad, and that three of the Cambodian factions were cooperating - indeed, they had accepted whatever the Component proposed in this area. This gave the Component a unique opportunity before the elections, and also allowed it to lay the groundwork for long-term human rights education after UNTAC leaves. The Symposium led to several project ideas (see annex IV).

A. Regional support

73. One goal of the Symposium, as stated above, was to bring Cambodian human rights groups into the Asian network of groups, and also involve as many Asian groups as possible in support of the Cambodians during the transitional period and after UNTAC leaves.

74. Mr. Akashi, in his opening statement said that Asia's human rights record was uneven, and the detention of Aun San Suu Kyi was very much to the fore. None the less, the debate showed many possibilities for regional links, and revealed an extraordinary range of human rights activity in Asia. This suggested, perhaps, that human rights were not "alien" to the region.

75. Mr. Saray said that ADHOC had called for regional human rights organizations to cooperate and form a Regional Federation of Human Rights Organizations for South-East Asia. He reiterated this appeal, and proposed that a human rights conference be held each year in Cambodia.

76. Professor Vitit Muntarbhorn (Chulalongkorn University, Thailand) examined the possibilities within ASEAN. He agreed that ASEAN was "ambivalent" in its human rights attitude, partly as a result of the criticism levelled at some ASEAN Governments. None the less, he pointed out that all the ASEAN members were guarantors of the Paris Peace Accords, and that this gave them a direct interest in ensuring that UNTAC was able to fulfil its human rights mandate. He said there were several ways ASEAN Governments could be drawn into human rights in Cambodia. One could involve preventive action, e.g. pressing ASEAN businesses not to deplete Cambodia's resources.

77. Professor Arya gave a detailed list of the regional organizations and agencies that were working on human rights, and he urged the Cambodians to participate and join. He suggested that they also prepare profiles of their members, for safekeeping with groups abroad, in the event of an arrest. He also urged that attention be paid to the mass media. Mr. Wong Kai Shing (Asia Human Rights Commission) also stressed the advantages of regional networking: it opened the way to fact-finding missions.

78. In a written statement delivered to the Conference secretariat, Professor Ghai offered to mount a course on the treaties that have been ratified by the SoC, either in Hong Kong or Cambodia. He also offered the help of Hong Kong University in establishing a human rights database, and in helping the Cambodian NGOs to develop constitutional proposals geared to the protection of human rights, to be published in advance of the elections. He suggested that they seek the endorsement of all political parties for these proposals before elections. Professor Ghai supported the idea of a conference on the practice of human rights in Cambodia a year after the new Government takes over.

B. International NGOs

79. The next layer of support came from international human rights NGOs. Senator Roco, in a keynote address, explained the IPU's well-established procedures for protecting detained parliamentarians. Ms. Sidney Jones (Asia Watch) predicted that the Cambodians would increasingly find themselves

exposed to risks. "Human rights is confrontational", she said. She then offered practical advice on safety: create links with the local diplomatic community and foreign journalists; identify a safe refuge in the event of having to flee; get the information out immediately to friends abroad.

80. Ms. Jones suggested that it might be well to experiment with such a system before UNTAC departed from Cambodia. She also stressed that it was important for Asia Watch to receive fast and accurate information about an abuse. Armed with such information, she said, Asia Watch could generate publicity. She said she would raise the possibility of sending volunteers to help the Cambodians translate information for transmission to Asia Watch. But she warned that no NGO could take the place of UNTAC. There was a danger in raising expectations too high.

81. Ms. Abeyesekera offered to spend a month in Cambodia helping the groups sharpen their reporting and documentation procedures.

82. Many of the Cambodians expressed concern at their lack of resources, but Ms. Brigitta Berggren (Swedish NGO Fund for Human Rights), urged them to be practical in making funding proposals, and to be aware of their limited absorptive capacity. "Don't expand too fast, or accept too large a grant", she said. In making a grant application, they should review the entire package offered by a donor. Goals should be stated clearly, and the groups should remember that funding carried onerous responsibilities - not least evaluating and reporting. Raising funds, in short, took time and energy.

83. Expatriate NGOs working in Cambodia have formed a coordinating committee to work with UNTAC's Human Rights Component. Speaking for the group, Mr. Tony Nooyens (OXFAM) urged realism. NGOs, he said could not assume the burden of protection offered by UNTAC. Most were working on development and reconstruction, and lacked the mandate for human rights work. Sister Denise Coghlin, speaking for the Jesuit Refugee Service, another NGO in the consortium, spoke in support of the consortium but warned against being "paternalistic" about the human rights groups, which were in fact formed independently of UNTAC.

84. Mr. Hawk said that he had already proposed several projects to the UNTAC Human Rights Component, which could go some way towards helping the Cambodians participate at the international level: (i) grass-roots education and training on human rights, using the Diokno (Philippines) method; (ii) training in United Nations human rights procedures, including taking a delegation of Cambodians to Geneva to attend the Commission on Human Rights (the International Human Rights Federation, Paris, has agreed to provide accreditation to a Cambodian speaker at the Commission); (iii) training in human rights monitoring. He also suggested the purchase of fax machines and computers, thus addressing some of the communications needs identified by other speakers.

85. There were other proposals for technical assistance and training, in response to the appeal of the Cambodian groups. These will be reviewed by the Component's staff.

C. The United Nations: The Special Rapporteur and the United Nations Centre for Human Rights, post-UNTAC

86. Ms. Helena Cook (Amnesty International), who moderated the third discussion (see programme in annex V), recalled that United Nations procedures offered several possibilities to NGOs. Among these were Working Groups or Special Rapporteurs covering disappearances, summary executions, religious intolerance, torture, arbitrary and summary killing, and arbitrary detention. She also noted that Cambodia had now acceded to several international instruments and that this would offer local Cambodian groups and their international supporters a chance to hold the new Government to account and expose violations. (UNTAC's background paper detailed the instruments. See annex VII).

87. Mr. Shinichi Ago (International Labour Organisation) and Ms. Margie de Monchy (UNICEF) both pointed out that their agencies will remain in Cambodia after UNTAC departs, and that both the ILO and UNICEF have a human rights mandate. Mr. Ago pointed out that Cambodia is a party to ILO Convention No. 29, which forbids forced labour. UNICEF promotes the Convention on the Rights of the Child, which aims at protecting children.

88. UNTAC officials also argued that the United Nations could form the final layer of the international coalition of support for Cambodian groups. All agreed there will have to be some kind of United Nations human rights presence in Cambodia after UNTAC leaves, particularly if the situation continues to deteriorate.

89. The starting point for possible models was article 17 of the Paris Peace Accords, which called for the appointment of a Special Rapporteur, if necessary, and by Mr. Akashi's suggestion that the Centre for Human Rights establish an operational presence in Cambodia after UNTAC leaves. The idea of a Special Rapporteur for Cambodia received strong support from Mr. Saray who called on UNTAC to "rigorously" apply article 17 of the Accords.

90. Mr. Gomez del Prado introduced a paper outlining a possible role for the United Nations after UNTAC leaves Cambodia (see annex VII). Picking up Mr. Akashi's suggestion, he mentioned two possible ways in which the Centre could establish an office in Cambodia:

(a) It could take over the running of UNTAC's human rights structure and serve any Special Rapporteur appointed by the Commission, as well as any human rights bodies needing information on Cambodia. The same office could also assist any independent human rights ombudsman set up under the Cambodian Constitution. In addition, it could also act as a documentation centre for NGOs, government officials and the public;

(b) A reduced structure, also run by the Centre, could serve as the "antenna" of the Special Rapporteur and provide some services to local NGOs, government officials and the public.

91. Mr. Gomez del Prado said that any office would require sufficient staff and funds to carry out human rights promotion and protection. He said that it might operate for a transitional period, until the necessary national human rights institutions were in place.

The Special Rapporteur

92. Mr. Hawk cautioned that a United Nations Special Rapporteur had produced two excellent reports on Cambodia in 1979 and 1980, but that bloc voting in the Commission on Human Rights had meant that the Commission never protested violations. In short, merely appointing a Special Rapporteur would not necessarily mean action by the United Nations.

93. This took place, however, at a time when United Nations human rights procedures were limited, and when Cambodia was the object of East-West tension, not the subject of a comprehensive United Nations peace agreement. Several speakers spoke in support of the proposal to appoint a Special Rapporteur.

A post-UNTAC presence for the Centre for Human Rights

94. Mr. Gomez del Prado recalled the experience of Haiti. Here the United Nations and the Organization of American States supervised free and fair elections. They then withdrew, and a military coup d'état overthrew the democratically elected president. This, he said, showed the importance of a permanent United Nations presence. Independent experts had proposed such a presence in Equatorial Guinea, Guatemala and Haiti but no action was taken by the Commission. There is one precedent: an agreement between the Government of Guatemala and Guatemalan refugees, calling for such an operational presence. Mr. Gomez del Prado said that the Centre for Human Rights is seeking funds to post an officer to Guatemala under this agreement.

95. He underlined that any proposal would require considerable work at the Commission by UNTAC, the Cambodian factions and Cambodian NGOs. It would also need a special resolution to appoint a Special Rapporteur. The mandate of the Centre in Cambodia would have to be spelled out, together with its financial implications. One of its most important functions would be to support the work of any Special Rapporteur.

96. Mr. Gomez del Prado suggested that the Centre for Human Rights could offer expertise in election monitoring and in the drafting of Cambodia's Constitution, and provide fellowships and training courses for police and government officials under its advisory services programme. This, too, would require funding.

97. Summing up, Ms. Cook agreed that the proposals for a new United Nations role that had been heard at the Symposium would require considerable political backing from UNTAC and probably the Cambodian political factions too. She proposed more work to determine how to proceed.

Annex I

OPENING STATEMENT BY THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CAMBODIA, Mr. YASUSHI AKASHI

Excellencies, Ladies and Gentlemen:

I am very pleased and honoured to welcome you all to the opening session of the first International Symposium on Human Rights in Cambodia.

The 40 participants in this Symposium include representatives of human rights organizations from Europe, North America and Asia. The participation of 25 participants from the Asian region is particularly encouraging - as of course is the presence at this opening session of representatives of three of the Cambodian factions; and of the four established Cambodian human rights groups.

The entrusting of an operational and intrusive human rights mandate to the United Nations, as an integral part of a peace agreement in order to facilitate national reconciliation and self-determination, is a new development with broad ramifications. It has been attempted before but never on the comprehensive scale approved by the Paris Accords on Cambodia. This is a new dimension for both United Nations peacekeeping operations and its human rights activities and is a challenge to the international community's ability to undertake multi-faceted operations on this scale. Its implementation is also a test of the political will of the signatories of the Paris Accords, particularly the Cambodian parties.

UNTAC's human rights mandate has two principal objectives: to prevent a return to the "policies and practices of the past" (a euphemism for the gross human rights violations which Cambodia has experienced in recent decades); and to establish a neutral political environment which will enable free and fair elections to be carried out by the United Nations.

This basically requires the establishment of a civil society governed by the rule of law in a country which has undergone, in the past two decades, one of the most traumatic upheavals in recent history; which consequently lacks all the normal structures, institutions and human resources to facilitate this transition; and which historically has experienced authoritarianism and conflict far more than consensus and reconciliation.

For any society this mandate would be daunting: for Cambodia it can at times seem overwhelming.

Yet my colleagues and I in UNTAC remain firmly optimistic that this unique challenge can be met, with your help.

[I should perhaps add here that I have been very concerned recently with a number of serious incidents which have undermined the neutral political environment we are charged to maintain. These have included the killing of Vietnamese civilians; the attacks on opposition party offices and residences; and a number of apparently politically motivated killings and attacks on

members of two factions in particular. There has not been a satisfactory response by the responsible authorities to any of these incidents. I have recently called on all parties to prevent such acts, and to seriously investigate and prosecute them.]

We are naturally all aware that the Paris Accords represent the results of a prolonged political process, and inevitably their implementation is politically circumscribed. Similarly, our responsibility to foster an environment in Cambodia in which respect for human rights shall be ensured - in the words of the Accords - cannot be isolated from this reality. The United Nations does not enjoy the freedom of non-governmental organizations in this respect. In view of the broad objectives of UNTAC it is essential that we maintain a careful political balance without, of course, compromising on our fundamental responsibilities, including in the domain of human rights.

In this difficult process we must also never lose sight of another basic reality viz, that we are operating in Cambodia, in South-East Asia. This is a country which has not enjoyed a long history of positive development in this area, in a region where residual opposition to many "foreign" or "Western" human rights impositions remains strong.

While I firmly believe that basic human rights and freedoms are universal - as embodied in the very Charter of the United Nations - and that they are equally desired by all people in all regions, we should not ignore this historical, cultural and regional context of our activities. UNTAC's first challenge is to establish the minimum respect for basic rights necessary to enable a free and fair election to take place. By definition, this is an individualistic process which demands the protection of essential individual rights.

This alone is a major challenge in present-day Cambodia. At the same time we must attempt to lay the groundwork for the future development of the institutions, infrastructure and expertise necessary for Cambodia to maintain a civil society governed by just laws. Regrettably, UNTAC lacks the time, the mandate or the resources to attempt to achieve more than this.

Inevitably, there is a host of equally important economic, social and cultural rights which will not be touched upon in this process and which cannot be overlooked in Cambodia's future development. UNTAC has a rehabilitation mandate which does cover some of these aspects, but without the minimum rehabilitation assistance requested by the Secretary-General being made available by donors during this period, there is little that can be done effectively to meet many basic and legitimate demands of the population in this respect. This reflects another harsh political reality within which we must carry out our task.

This brings me to the main objective of this Symposium which is to identify ways and means by which we - the international community - can provide support and assistance to the future human rights process in Cambodia, and specifically to national human rights structures. Our collective responsibility in this area cannot end with UNTAC. Cambodia's future

peace - and its respect for human rights - is ultimately and inevitably in the hands of Cambodians. The international community, including the United Nations, can only assist Cambodians to meet this challenge, they cannot assume responsibility for it.

Within the obvious limits of its resources, UNTAC has made a start in this area. Human rights education, training and information programmes have begun throughout Cambodia. The SNC has, at our request, acceded to the six principal human rights instruments in the past months. Hundreds of complaints have been received from all parts of the country and, where appropriate, have been investigated. Prison conditions have been improved, some detainees have been released and other corrective action has been taken by UNTAC. Much, of course, remains to be done in all areas.

Perhaps most importantly, however, four new Cambodian human rights groups have been established and begun functioning in the past six months. They now have a joint membership of several thousand throughout the country. We are supporting them in all possible ways, especially with education materials, publications and training.

These groups are dedicated and courageous. I wish to pay the highest tribute to them and to assure them that UNTAC will continue to support them strongly while it is here. There is an urgent need, however, for more international and regional support for these new groups in all areas.

They would all benefit from links with the international and regional human rights networks; from material assistance; education programme materials and expert training. I have recently issued an appeal to selected donor Governments for funds to support human rights education and training activities in Cambodia and I am confident that a number of Governments will respond positively.

It is our hope that this Symposium will also provide concrete non-governmental support for Cambodian human rights groups and programmes. We need the United Nations Centre for Human Rights to establish an operational presence in Cambodia in order to work with NGOs and Cambodian groups in this area, especially in the post-UNTAC era. We need agencies to work as partners with us in implementing our education and training programmes. Most of all, Cambodians need to know that there is a tangible regional and international commitment to support their courageous efforts, both during and after this transitional period.

I believe we could envisage a consortium of the United Nations, international and non-governmental organizations, and regional and national groups working together for this common purpose.

The report of this Symposium will go to the United Nations Secretary-General; to the next session of the United Nations Human Rights Commission; and, in more popular form, to all interested Cambodians. A report on UNTAC's human rights activities will also go to the World Conference on Human Rights to be held in Vienna next year.

I urge you all to pool your vast experience and expertise in order to come up with realistic and practical proposals for helping in this unique exercise. I can assure you that UNTAC will give every possible assistance in the coming months. Equally clear, however, is the need for a determined collective effort to take this process further and to safeguard it for the future generations of Cambodians.

I know you will all agree with me that they deserve no less.

I wish you every success in your deliberations in the next two days and look forward to receiving your report and recommendations.

Thank you.

Annex II

OPENING STATEMENT BY MR. DENNIS McNAMARA, DIRECTOR, UNTAC HUMAN RIGHTS COMPONENT

Excellencies, Ladies and Gentlemen,

May I first reiterate the very sincere welcome extended to all participants in this Symposium by Mr. Akashi. It is a great encouragement for our efforts to see such a qualified and experienced group meeting, for the first time, here in Phnom Penh. I would also extend a special welcome to our friends and collaborators from the Cambodian human rights organizations and to the distinguished representatives of three Cambodian factions who have just addressed you.

You have earlier heard the Special Representative of the Secretary-General outline the broad parameters within which the UNTAC Human Rights Component operates. He has emphasized the political and regional constraints within which we must function, as well as the crucial importance of the human rights mandate to the success of the overall Cambodian peace plan.

You have also heard one of the region's foremost jurists on human rights sharing some of his considerable experience and wisdom, and you have heard representatives of three main Cambodian factions give you their perspectives on the importance of human rights to a future Cambodia.

We have distributed to you a background paper, prepared by our Rapporteur, giving you the details of UNTAC's human rights activities. I would like to outline in this presentation, some of our preoccupations which have led to the calling of this Symposium, and some of our expectations and hopes for it.

Despite a complex and increasingly difficult political backdrop, which includes UNTAC's complete inability to work in one of the zones of Cambodia, I believe it is true to say that UNTAC has managed to establish the first foundations for promoting respect for human rights and fundamental freedoms for Cambodians in the future. This is so in regard to accession to the international instruments; legal reforms; human rights education, training and information programmes; prison reform and the beginnings of a penal and judicial system based on accountability and respect for the rule of law. It cannot be overemphasized, however, that this process remains fragile in the extreme, particularly in regard to the separation of the executive and the judiciary.

In many respects we had to start from scratch. There were few basic structures to draw on and even fewer human resources. Our achievements are in danger of quickly disappearing if they are not nurtured and supported by a collective international effort. It is therefore imperative to us that this Symposium starts the process of formalizing an international and regional support network for Cambodian human rights activities.

The UNTAC human rights mandate offers a new direction and a new dimension for international human rights activities. It is unparalleled in its comprehensiveness and its ambition. Whether it will be a model for future programmes, it is too soon to judge. What is, however, already very clear is that we are daily learning lessons which must be useful for future such enterprises.

This mandate, as you are aware, proclaims that we must take all steps to avoid a return to the gross violations of the past by dealing with the present, and establishing a safe environment in which free and fair elections can be held. Human rights education is specified to be the cornerstone of this mandate, which in the broadest sense it certainly is. However, it is crucially supplemented by our daily monitoring and investigation activities supported by proposals for redress, where appropriate.

The Human Rights Component of UNTAC has some 30 professional officers for this task and of necessity works in close cooperation with the various other UNTAC Components. The immediate challenges for UNTAC are to promote the rule of law through internal reform; to change official practices by training and monitoring; to promote a psychological and attitudinal change in officials and the population at large through investigations, training and education; and to lay the foundation for future development of just laws and institutionalized respect for the rights of all Cambodians.

These are, collectively and separately, fundamental and dramatic steps for any country and especially for Cambodian society, which has been subject to decades of conflict, upheaval and confrontation. Indeed, some younger Cambodians have known nothing else. We have been charged to establish the framework for a civil society and for national reconciliation, in just over one year.

This is obviously a massive undertaking with few resources in an exceptionally short time period. As has been pointed out, the basic structures and institutions for this process are lacking in Cambodia as is the availability of qualified Cambodians able or willing to assist.

There is, therefore, in our view, an urgent need for the international community - and the international regional human rights organizations in particular - to realize that unless there is a pooling of international, regional and national resources, expertise and ideas, we will be unlikely to be able to meet or sustain this challenge. The fragile plant of democracy and rule of law in Cambodia will require extremely careful nurturing in the next years, if it is to survive the inevitable political storms it is bound to face.

On the broader plain, if human rights are to play their proper role in similar peace-keeping operations, designed to move societies from conflict to reconciliation and democratic processes, there is an urgent need for coordinated and collective international action. In my view the United Nations Centre for Human Rights should have a key role to play in such exercises. In Cambodia, we have received support from the Centre, and as the Special Representative has stated, we believe that it must, for the first

time, become operationally involved here in order to follow up on UNTAC's activities. Not only would this provide invaluable expertise and resources but it would also give a crucial link to the United Nations Human Rights Commission and its Sub-Commission, and to the possible future Special Rapporteur procedure envisaged in the Paris Accords.

Coupled with this, UNTAC must work in consort with international and regional human rights groups, to provide an advisory support mechanism for Cambodian organizations.

Whether this could be assisted by a formal regional human rights body (or instrument); a new non-governmental structure or other regional or national mechanism is something we might discuss. We need NGOs as operational partners to provide future expertise networks, national advocacy and advice, as well as to implement education and training programmes. All of this is designed to provide a substantive and protective backup to the fragile indigenous groups until they are able to function more independently and securely. I believe that all of them will confirm to you that such support is vital, particularly in the unpredictable post-elections and post-UNTAC period.

For bureaucracies and some organizations, these may be radical and excessive proposals. We are convinced, however, that we must look for innovative and even daring new initiatives, if the new direction for human rights activities, as envisaged in the Cambodian Accords, is to be sustained.

I believe it would be highly irresponsible of us - the international community - if we were not to actively and concretely follow up the initiatives we have begun in Cambodia, in the difficult years which undoubtedly lie ahead of this country. I regret that there has been, in my view, a lack of focus by Governments and by non-governmental organizations on this crucial rehabilitation aspect. To date we have had many observers and critics of our human rights efforts in Cambodia, but few operational partners. A number of Governments are, I believe, willing to fund and support realistic and innovative initiatives in this area. There are great dangers, in view of the overloaded international political agenda, of a short-term/quick-fix approach to these complex and vital issues in situations such as Cambodia.

Cambodia is making the transition to democracy. But experience elsewhere has shown that it will take more than elections to create a just society and heal past wounds.

The United Nations structures, as you know are limited and overstretched, both here and worldwide. But I am convinced that we can rise to the challenge - with your help.

This was the reason we invited you here today. You will hear more eloquently and with greater conviction first-hand from our Cambodian friends, just how much your support means to them. We can only hope that you will all respond to this urgent appeal. Thank you.

Annex III

STATEMENTS BY THE CAMBODIAN, ASIAN AND INTERNATIONAL NGO GROUPS

Joint statement by the Cambodian Groups (ADHOC-LICADHO-VIGILANCE-OUTREACH)

On behalf of the four Cambodian Human Rights Groups, we would like to express our most sincere thanks to all our distinguished guests and to Mr. McNamara and his colleagues for organizing this first Symposium in Cambodia.

This gathering gave us the opportunity to discuss human rights issues with specialists. Those of us working in human rights in Cambodia have been greatly encouraged in many ways:

- we have and will always have the support from the international community;

- our exchange of experiences is particularly important to us after 20 years of isolation and allows us to develop our own strength. It reinforces the links between Cambodian NGOs and the regional and international networks which will help us in our future work.

During the Symposium all the participants have concentrated on finding a mechanism to protect local NGOs in the post-UNTAC period even though we have not yet found the correct mechanism.

The pre-electoral period is a crucial time, hence all Cambodians have to work together with UNTAC and international NGOs in order to achieve peace and democracy in Cambodia.

The post-UNTAC period will also be very critical. We are prepared to face all dangers. We need your complete support to cross this turbulent wave.

We have the following five requests to submit to you to help us achieve our goals:

(a) To meet at a second symposium just before the elections;

(b) To obtain from you all documents, materials and trainers to achieve our aim;

(c) We need your moral and political support now and after the elections;

(d) To establish a Human Rights Centre based in Cambodia;

(e) To support the Human Rights Task Force project to observe and monitor the future elections.

We will work hard to make sure Cambodians have to respect each other and to face their destiny without discrimination as to race, colour, religion, sex and political opinions.

We are grateful for your presence and concern in our matters and we wish you have a safe trip back home!

Joint statement by the participants from the Asian Regional Human Rights Organizations

The Asian Regional Human Rights Organizations extend their solidarity with the Cambodian people and full support for the Cambodian NGOs in their struggle for peace, human rights and social justice in their society.

Recognizing that many human rights organizations are struggling for similar rights in their societies, the Asian Human Rights Organizations welcome their Cambodian counterparts into the Asian human rights community. Their presence adds strength to our fragile but growing network and we hope that our support will give them encouragement in their difficult task ahead.

All the Asian organizations present here today subscribe to the Universal Declaration of Human Rights and all international instruments on human rights laws. We believe in the universal values of freedom, equality and democracy contained in these documents with their anchor in the sanctity accorded to human life and human dignity.

However, the spirit of these instruments is not experienced in the actual lives of the vast majority of Asian people. The values and laws anticipated by the documents on international human rights have yet to be mediated and implemented in the context of contemporary Asian reality. In that sense, all of us in the Asian human rights movement are part of a grand experiment to make human rights real and relevant in the lives of our people. We have many ideas, experiences and strategies to share and evaluate together. In that sense, this is just a beginning. We call for a continuing dialogue among human rights organizations in the Asian region in the context of our collective experience.

With regard to the Cambodian context, we want to extend our support to UNTAC and particularly to the Human Rights Component. We would, however, urge UNTAC to take firmer and urgent actions to counter the violations of human rights and to take necessary steps to assure the respect of human rights after UNTAC leaves.

The Asian regional groups have offered their services to assist Cambodian human rights groups and UNTAC in the following ways:

- Law Asia to assist in strengthening the judicial process in Cambodia, in training lawyers and judges and assisting them in their efforts to establish professional organizations;

- International Centre for Ethnic Studies to conduct a research study aimed at policy recommendations with regard to the management of ethnic conflict in Cambodia;

- Asian NGOs such as the Asian Human Rights Commission and INFORM, Sri Lanka to assist Cambodian NGOs in documentation and dissemination strategies with regard to human rights violations;

- Asian NGOs and regional ne works offer to assist Cambodian NGOs in the dissemination of information and the monitoring with regard to coming elections;

- Asian NGOs and regional networks would facilitate and support the integration of Cambodian NGOs into the regional network;

- Asian NGOs and regional networks present at the sessions of the Commission on Human Rights in Geneva in February will work with their Cambodian counterparts and the UNTAC Human Rights Component to ensure the fullest protection of human rights in Cambodia and the security of human rights defenders in the post-election period.

Joint statement of international organizations

We as international organizations will leave this conference with deep respect for our Cambodian colleagues and a better understanding of their vulnerability, particularly after UNTAC leaves.

The fact that thousands of people across the country are joining human rights organizations is an enormous sign of hope, but the overwhelming impression we come away with is of a climate of fear. If this mammoth United Nations operation cannot prevent political violence and intimidation, what happens when it goes?

The United Nations investigations have not generally led to punishment of the perpetrators; Cambodians cannot rely on the legal system for justice and our colleagues have every right to be concerned about the possibility of reprisals if they attempt to undertake investigations.

There is no reason to believe that human rights abuses will automatically vanish after the elections next May. Documenting and publicizing human rights violations through the international network to which we all belong may be the only way to generate pressure on those responsible.

We have to give our Cambodian colleagues some sense of security that collecting information on abuses is not going to lead to their own arrest or punishment.

To that end, we strongly support the creation of a permanent on-site United Nations human rights presence, adequately staffed and funded, after the departure of UNTAC, with the capacity to monitor human rights violations.

We will do everything we can to support and assist the Cambodian groups in research, documentation, training, provision of materials and involvement in our activities internationally.

But the international community has a responsibility as well to ensure that the need to maintain a working relationship with various factions does not lead to a toleration of human rights abuses.

Annex IV

THE TRAINING AND EDUCATIONAL WORK OF UNTAC'S HUMAN RIGHTS COMPONENT AND THE OUTLINES OF A POSSIBLE WORK PROGRAMME

The Symposium was intended to result in action, and to support the Human Rights Component's work in the run-up to elections. Whatever United Nations body fills the vacuum left by UNTAC, it will thus have a solid base from which to work. This applies particularly to education, training and information.

The Symposium produced a range of ideas that could result in training and information projects. Organizations are encouraged to contact the Training Unit if they identify any of special interest. Among the possible projects:

Formal education

Project 1: A new curriculum on human rights for the civic education course needs to be written and tested for the 1993/94 school year. Work would draw on the experience with the UNTAC civil education curriculum used in 1992-1993.

Project 2: The course in the university law school should continue. Study materials should be written in Khmer for distribution to students and instructors identified.

Project 3: Courses or lecture series should be created in other institutions of higher learning.

Informal education

Project 4: General human rights/criminal justice courses should be organized, especially in the provinces for existing SoC police and newly created police forces of the factions.

Project 5: In order to remove excessive powers of the police, contrary to the Transition Provisions, qualified specialists would develop technical briefings on preparation of charge-sheets, prison registers, etc. and show police in police stations how to use them.

Project 6: Training in investigations of suspicious death, using appropriate techniques of forensic pathology. Such training must also involve NGOs so that they can raise issues where political killings are suspected.

Project 7: Follow-up training based on Transition Provisions, with more hands-on training (practical as opposed to classroom training), including providing consultants to prosecutors, court consultants and court monitors, as well as specialists in forensic pathology and other areas. Particular attention must be devoted to improving prosecutions relating to grave violations of human rights.

Project 8: Special project with Supreme Court to familiarize the judges with new functions of the Court, preferably with a team of distinguished Asian judges.

Project 9: Special project with Appellate courts, which are coming into existence but lack training.

Project 10: Follow-up to briefings with faction officials and high-level SoC officials.

Project 11: New training project for leaders of other political parties.

Project 12: Training in election monitoring should be provided to those organizations that want to monitor the United Nations-run election in 1993 and other elections.

Project 13: Training in United Nations procedures should prepare local human rights groups to contribute to the next session of the Commission on Human Rights and understand the role of the treaty-monitoring bodies. The project could include attendance at the Commission.

Project 14: While security conditions do not allow much investigative work and documentation of violations now, the groups need training in the technical aspects of monitoring for future application.

Project 15: The provincial sections of Cambodian human rights groups offer the best vehicle for bringing human rights education to remote districts. In order to do this training of trainers must take place in at least eight provinces.

Project 16: Creation of the Bar Association mentioned in article 7 of Transition Provisions with assistance of regional lawyers and associations of lawyers.

Project 17: Setting up a programme of field monitors, placed either in provincial offices of human rights associations or otherwise present in remote areas to monitor human rights.

Project 18: Programme of foreign lawyers, authorized to practise in Cambodia, to help train local defenders by demonstrating how to conduct a defence in court and otherwise developing the application of law with Cambodian defenders.

Project 19: Expansion of general human rights training with womens' organizations.

Project 20: Specialized training on the Convention on the Elimination of All Forms of Discrimination Against Women, with possible cooperation with international NGOs like International Women's Rights Action Watch.

Project 21: Training of trainers in general human rights and in conflict resolution methods in areas where there is potential for group conflict.

Project 22: Study groups of intellectuals on cultural and religious issues to gain better cross-cultural understanding and disseminate information.

Project 23: Adaptation of training methods and materials to meet needs of student organizations wishing to learn about human rights.

Non-formal education/information

Project 24: Support for independent media and publishing to overcome economic obstacles to free expression.

Project 25: Carry out feasibility study on establishing such a centre, finding funding for it, and recommending an institutional base to sustain it.

Project 26: Scripts for expanded UNTAC radio programme on human rights.

Project 27: Dubbing or subtitling of outstanding films with human rights themes (especially those that have received awards in human rights films festivals) to show in Cambodian TV or in cinemas or video houses.

Project 28: Continuation of Ayai programme with additional performances.

Project 29: Develop project for nang talung (traditional shadow puppet theatre) performances and video for TV.

Project 30: Organization of Human Rights Day events.

Project 31: Organization of a human rights film festival.

Annex V

PROGRAMME OF THE SYMPOSIUM

Monday, 30 November 1992

8.30	Registration of participants.
9.00	Welcome by Mr. Dennis McNamara, Director, UNTAC Human Rights Component.
9.05	Opening of the Symposium by the Special Representative of the Secretary-General for Cambodia, Mr. Yasushi Akashi.
9.30-12.00	The Importance of Human Rights to the Peace Process in Cambodia.
	[Moderator: Mr. Michael Williams, Deputy Director, Human Rights Component]
9.30	Address on behalf of Ms. Aung San Suu Kyi on "Human Rights in a Process of National Reconciliation".
9.45	Address by Senator Raul Roco, Inter-Parliamentary Union, on "The Significance of Cambodia's Transition to Democracy for the Region".
10.15	Presentations by representatives of the Cambodian parties represented on the Supreme National Council on their perspective on the role of human rights in the future of Cambodia as envisaged by the Paris Accords.
11.30	Presentation by Mr. Dennis McNamara, Director, UNTAC Human Rights Component, on UNTAC's human rights mandate and programmes.
12.00-2.00	Lunch for participants hosted by UNTAC
2.00-5.30	First Workshop: Human Rights, Peacekeeping and the Transition to Democracy in Cambodia
	[Moderator: Mr. Nayan Chanda]
	Background paper on UNTAC Human Rights Component's activities and concerns during the transitional period.
	An Historical Overview of the Human Rights Situation in Cambodia. Presentation by Dr. David Chandler. Discussant: Mr. David Hawk.

Cambodian Perspectives on the Human Rights Situation Today. Presentations by Mr. Thun Saray, Cambodian Human Rights Association, Mrs. Kek Galabru, League for the Defence and Promotion of Human Rights, Mr. Kem Sokha, Human Rights Vigilance of Cambodia, and Mrs. Srey Chan Phallara, Human Rights and Community Outreach Projects.

Election Monitoring and the Role of NGOs. Presentation by Mr. Reed Brody, International Human Rights Law Group. Discussant: Prof. Reginald Austin, Director, UNTAC Electoral Component.

Contending with Political Repression and Violence. Brief presentations by the Cambodian human rights associations. Discussant: Mr. Basil Fernando.

5.30-6.00 Special performance of Cambodian Ayai singers.

Tuesday, 1 December 1992

8.30-12.30 Second Workshop: Regional Perspectives on Post-UNTAC Human Rights Issues and Concerns.

[Moderator: Prof. Yash Ghai]

Human Rights and the Cambodian Judicial System. Presentation by Mr. Jim Ross. Discussant: Mr. Param Cumaraswamy.

Detention in New Democracies. Presentation by Ms. Haydee Yorac. Discussant: Ms. Sunila Abeyesekera.

Minorities and Human Rights. Presentation by Ms. Radhika Coomaraswamy.

2.00-5.30 Third Workshop: Domestic and International Support for Human Rights in Cambodia in the Coming Years.

[Moderator: Ms. Helena Cook]

Recent ASEAN Human Rights Initiatives. Presentation by Mr. Vitit Muntarbhorn.

Ways and Means of Providing Support to Indigenous NGOs from Abroad. Presentation by Ms. Sidney Jones.

Regional Human Rights Networking and Support. Presentation by Dr. Gothom Arya. Discussant: Mr. Wong Kai Shing, Asian Human Rights Commission.

The Advantages and Dangers of Foreign Funding for Indigenous NGOs. Presentation by Ms. Brigitta Berggren.

International Support for Human Rights Education and Information in Cambodia. Presentation by Mr. Stephen Marks.

Possible post-UNTAC United Nations Roles in Support of Human Rights in Cambodia. Presentation by Mr. J.L. Gomez del Prado. Discussant: Mr. Reed Brody.

General discussion.

8.00 Dinner for participants hosted by the UNTAC Human Rights Component.

Wednesday, 2 December 1992

9.30 Presentation of summary report and conclusions and recommendations: Mr. Iáin Guest, Rapporteur.

10.00 Discussion of conclusions and recommendations.

12.00 Closing remarks by Mr. Dennis McNamara.

12.30 Briefing for the press.

Annex VI

LIST OF PARTICIPANTS

International groups

Mr. Marco Altherr, International Committee of the Red Cross (Cambodia)
Ms. Brigitta Berggren, Swedish NGO Fund for Human Rights
Mr. Reed Brody, International Human Rights Law Group
Prof. David Chandler, Monash University
Sr. Denise Coghlan, Jesuit Refugee Service
Ms. Helena Cook, Amnesty International
Mr. Param Cumaraswamy, International Commission of Jurists/Lawasia
Mr. David Hawk, Cambodia Documentation Centre
Ms. Sidney Jones, Asia Watch
Mr. Olivier Monange, Fédération internationale des droits de l'homme
Mr. Tony Nooyens, OXFAM
Ms. Clodagh O'Brien, International Cooperation for Development and Solidarity (CIDSE)
Sen. Raul Roco, Inter-Parliamentary Union
Mr. Jim Ross, Lawyers Committee for Human Rights
Ms. Betty Scheper, NOVIB (Netherlands)

Asian groups

Ms. Sunila Abeyesekera, INFORM (Sri Lanka)
Prof. Gothom Arya, Civil Liberties Union (Thailand)
Mr. Nayan Chanda, Far Eastern Economic Review
Mr. Gan Teik Chee, ALIRAN (Malaysia)
Ms. Radhika Coomaraswamy, International Centre for Ethnic Studies (Sri Lanka)
Prof. Yash Ghai, Hong Kong University
Mr. Yoichi Kitamura, Japan Civil Liberties Union
Prof. Vitit Muntarbhorn, Chulalongkorn University (Thailand)
Mr. Wong Kai Shing, Asian Human Rights Commission
Ms. Haydee Yorac, Electoral Commissioner, Philippines

Cambodian groups

Mr. Thun Saray, Cambodian Human Rights Association (ADHOC)
Mr. Khay Matoury, ADHOC
Mrs. Kek Galabru, (LICADHO) Ligue cambodgienne pour la défense et la promotion des droits de l'homme
Mr. Sa Ly, LICADHO
Ms. Srey Chan Phallarah, Human Rights and Community Outreach Projects
Ms. Neang Kim Hor, Human Rights and Community Outreach Projects
Mr. Mao Sambath, Human Rights Vigilance of Cambodia
Mr. Kem Sokha, Human Rights Vigilance of Cambodia

United Nations

Mr. J.L. Gomez del Prado, United Nations Centre for Human Rights
Ms. Margie de Monchy, UNICEF
Ms. Nici Dahrendorf, UNHCR (Cambodia)
Mr. Lek Hor Tan, UNESCO (Cambodia)
Mr. Shinichi Ago, International Labour Organisation

UNTAC

Mr. Dennis McNamara, Director, Human Rights Component
Mr. Michael Williams, Deputy Director, Human Rights Component
Mr. Reginald Austin, Director, UNTAC Electoral Component
Mr. Basil Fernando, Chief, Investigation and Monitoring Unit
Mr. Stephen Marks, Chief, Education, Training and Information Unit
Mr. Thant Myint-U, Secretary of the Symposium
Mr. Iain Guest, Rapporteur
Ms. Suman Dhar, Administrative Officer

Annex VII

LIST OF DOCUMENTS PREPARED FOR THE SYMPOSIUM

Background note on UNTAC's human rights activities in Cambodia (official UNTAC document).

Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (official UNTAC document).

Election monitoring and the role of non-governmental organizations, by Reed Brody (International Human Rights Law Group).

Contending with political repression and violence, by Basil Fernando.

Possible post-UNTAC United Nations roles in support of human rights in Cambodia, by J.L. Gomez del Prado (United Nations Centre for Human Rights).

Supporting local NGOs: the role of international human rights organizations, by Sidney Jones (Asia Watch).

Human rights education, training and information in Cambodia: activities to date and post-election prospects, by Stephen Marks.

Parliament and the protection of human rights, by Raul S. Roco (Chairman, Committee on Justice and Human Rights, Senate of the Philippines. Member, Inter-Parliamentary Union Committee on Human Rights of Parliamentarians).

Independence of the judiciary in Cambodia, by James Ross (Lawyers Committee for Human Rights).

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COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Agenda item 10

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Secretary-General on human rights and forensic science submitted pursuant to Commission on Human Rights resolution 1992/24

GE.93-10445 (E)

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Introduction

1. At its forty-eighth session, the Commission on Human Rights adopted resolution 1992/24 in which it noted that various reports submitted to it referred to the exhumation and identification of probable victims of human rights violations and related abuses, as well as to the corresponding technical and practical difficulties encountered in that process. It also noted that a number of Governments as well as special rapporteurs and working groups had requested or mentioned the possibility of making use of expertise in forensic science. The Commission took into consideration the limited human and financial resources of the Secretary-General for any initiative in this regard and therefore decided that it would be desirable to create, under United Nations auspices, a standing team of forensic experts and experts in other relevant disciplines, to be enrolled on a voluntary basis worldwide, who could be requested by Governments concerned, through the Secretary-General, to assist, on the basis of professional objectivity and in a humanitarian spirit, in the exhumation and identification of probable victims of human rights violations or in the training of local teams for the same purpose. In this connection, the Commission requested the Secretary-General, within existing resources, to enter into consultation with appropriate professional organizations in the field of forensic science and related disciplines with a view to studying the practical and financial viability of such a scheme and to developing workable arrangements for its management. The Commission further asked the Working Group on Enforced or Involuntary Disappearances to render active assistance in this regard and the Secretary-General to inform the Commission at its forty-ninth session on progress made in this matter and to make such recommendations as he might consider appropriate.

2. Fact-finding procedures established by the Commission on Human Rights and other mechanisms dealing with human rights violations have repeatedly stressed the importance of proper medico-legal investigations into deaths which occurred under circumstances suggesting human rights violations. They have called for forensic expertise in connection with tasks such as the identification of remains found in mass graves or the assessment of the reasons for the death of a person purported to be a victim of extrajudicial, summary or arbitrary execution or disappearance. Medico-legal examinations are also required in order to determine the nature of injuries or marks left on the body of persons alleged to have been tortured or to determine the filiation of children of disappeared persons. The need for such expertise has been emphasized in reports to the Commission, in particular by the Working Group on Enforced or Involuntary Disappearances, as well as by the Special Rapporteur on extrajudicial, summary of arbitrary executions, the Special Rapporteur on the situation of human rights in occupied Kuwait and the Special Rapporteur on the situation of human rights in Iraq.

3. In effect, despite the international consensus on the importance of observing and protecting human rights, gross violations persist in numerous countries. In particular, extrajudicial executions and disappearances affecting such fundamental rights as the rights to life, physical integrity and recognition as a person before the law - with its subsequent effects on many other rights enshrined in the Universal Declaration of Human Rights and stipulated in the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights - continue to be a frequent occurrence.

There is often a lack of adequate, if any, official investigations into such cases, particularly when they are perpetrated by government forces. Aside from the political and practical reasons involved, adequate investigations may also be precluded by the fact that the bodies have been disposed of in a manner that prevents their use as evidence. For instance, bodies are sometimes burnt, thrown into rivers or seas or buried in shallow pits without any identification; they are sometimes blasted and the remains covered with soil or left uncovered as intimidating evidence of violence. In other cases, the killers deliberately mutilate the body before or after death, to thwart identification or to intimidate others.

4. Another important contribution of forensic scientists extends not only to the dead, but also to the living. For example, the Working Group on Enforced or Involuntary Disappearances repeatedly reported on cases in which the military authorities in Argentina or other persons involved in disappearances had arranged for the adoption of children of disappeared persons without the knowledge and consent of their close relatives, in particular the grandparents. (See, in particular E/CN.4/1986/18, paras. 49-51; E/CN.4/1990/13, paras. 48 and 49 and E/CN.4/1993/25). In connection with these cases, the American Association for the Advancement of Science (AAAS) sent a mission to Argentina in 1984, at the request of the National Commission on Disappeared Persons (CONADEP), to assist in the identification of the remains of thousands of persons who were abducted and killed and later buried in mass and single unmarked graves from 1973 to 1983. Forensic experts trained Argentine anthropologists in modern technologies utilized for the identification of the remains. They also trained biologists and medical doctors in genetic methods aimed at providing proof of the real identity of children suspected to have been adopted illegally. In these cases, forensic scientists examine skeletal remains to determine whether a female victim may have given birth to a child. They then use genetic technology to establish the genetic relationship of the adopted children with their biological family.

5. Torture is another field in which forensic expertise is needed for the detection of human rights violations. Many international and local human rights organizations have been involved for years in producing explicit evidence of torture, (particularly in countries where abuses are widespread), which is often at variance with the official version provided by the authorities. Part of the daily work of the forensic pathologist is to determine and evaluate lesions with regard to their age, severity and causes and to distinguish between postmortal and intravital lesions. Forensic experts can also provide evidence on the use of psychotropic drugs or psychological torture; in forensic toxicology, detection of most of the drugs and poisons even in small quantities, is possible. However, in the absence of such determinative forensic evidence, many justified complaints are simply dismissed. It is in response to these problems that the work of forensic scientists will bring justice to all parties concerned.

I. ACTIVITIES OF FORENSIC SCIENTISTS

6. The information received from non-governmental organizations involved in forensic activities indicates that forensic scientists work to combat human rights violations in three ways. First, they conduct medico-legal

investigations and research into incidents of death or torture. Second, they offer forensic training to other scientists and the judiciary to enable them to conduct such investigations themselves. Third, they endeavour to develop international standards to govern forensic investigations.

A. Medico-legal investigations

7. The bodies of victims of summary executions or disappearances are often buried in shallow, unmarked graves. The remains found in these graves have become invaluable sources of information for forensic scientists in conducting their investigations. Forensic experts exhume these graves, perform initial and second autopsies, observe official inquests into and/or assist in court-ordered investigations of these suspicious deaths.

8. For the particularly difficult tasks of identifying the remains found in unmarked graves or any other places, the scientists employ multidisciplinary techniques involving medicine, anthropology, archaeology, sociology and law. Their tasks are threefold.

9. First, they conduct interviews and review documents to ascertain the location of the burial sites and the victims whose remains were probably buried in those sites. Scientists interview the people who live in the locality, sometimes grave-diggers who have been hired to bury the bodies, or civilians who may have heard rumours that a certain area is used as a burial site or who can provide information on other details leading to the identification of the victims. They also review documents, sometimes official records, which indicate where the bodies of certain individuals may have been interred. In some cases the governmental authorities kept detailed records on persons arrested by them. The Special Rapporteur on the situation of human rights in Iraq has reported that such records have been found with regard to a considerable number of persons followed, wanted or detained in northern Iraq, many of whom subsequently disappeared (E/CN.4/1993/45).

10. Second, they conduct the exhumation in the appropriate scientific manner in order to be able to obtain the optimal amount of information. Because information from both the remains themselves and from the spatial features of the graves is useful, it is crucial that both be preserved and documented carefully. Hence, archaeological techniques much like those used in excavating prehistoric sites are used. The graves are marked so that the exact coordinates of where each item is uncovered can be identified. The soil and dirt are removed in such a manner as to ensure that no piece of evidence, however minute (e.g., teeth, bullets, etc.), will be missed. More important, the remains are exhumed with the care and deliberation that will ensure the least amount of damage and alteration to the surface and placement of the remains. Failure to employ the proper method of exhumation can lead to the destruction of the evidence. For example, according to a report by the Argentine Team of Forensic Anthropology, this occurred in Argentina when bulldozers were run through some graves. As a result, no useful information could be obtained from either the spatial features of the graves or the remains themselves.

11. Third, they examine the remains to determine the cause and manner of death, and attempt to establish the identity of the victim. Forensic experts

analyse the skeletal remains to determine the physical characteristics of the victim, together with the cause, manner, time and place of death with a view to ascertaining the victim's identity. In doing so, they use techniques in pathology, odontology, radiology, etc. For instance, teeth and skeletal x-rays are taken to identify the victim. Also, anthropological studies may be undertaken to determine the skeleton's age at death, sex, race, stature and handedness. The results are then compared to the antemortem characteristics of the deceased. Forensic anthropologists can also distinguish various types of trauma to the bone which help determine the manner and cause of death.

12. For several years specialized non-governmental organizations have conducted missions to various countries in order to assist in the identification of the remains of victims of disappearances or extrajudicial executions. For example, experts sponsored by the AAAS worked in Argentina in 1984, at the request of the governmental Commission on Disappeared Persons (CONADEP); in El Salvador in 1988; in Chile in 1989; in Israel in 1989; in Bolivia in 1989; in El Salvador in 1989; again in Argentina in 1990; in Brazil in 1990; in Panama in 1991 and in Mexico in 1991. Similar missions were carried out by experts of the Danish Committee of Concerned Forensic Scientists and Physicians for the Documentation of Human Rights Abuses to Bolivia in 1986 and to El Salvador in 1988 and by the American non-governmental organization Physicians for Human Rights to Kenya in 1987; to Israel from 1988 to 1992 (10 different missions to observe and participate in the autopsies of the bodies of Palestinians who had died in detention or under suspicious circumstances); to Brazil in 1990; to Guatemala from 1990 to 1992 (five different missions for the exhumation and identification of dead bodies found in mass graves); to northern Iraq from 1991 to 1992 (two missions for the exhumation and identification of the dead bodies of Kurds presumed to have been victims of summary executions) and to the territory of the former Yugoslavia in 1992. The Argentine Team of Forensic Anthropology, in addition to its permanent involvement in the exhumation and identification of the remains of victims of disappearance in Argentina, performed, at the request of governmental bodies or non-governmental organizations, the following missions during the period 1975-1983: to the Philippines in 1986; to Bolivia in 1986, 1989 and 1992; to Chile in 1989; to the United States of America in 1989; to Nicaragua in 1990; to Venezuela in 1990; to Guatemala in 1991 and 1992; to Panama in 1992; to Iraq in 1992 and to El Salvador in 1992.

13. Forensic scientists cite three reasons why they investigate the graves of the victims of extrajudicial killings. First, from a humanitarian perspective, they hope to be able to inform the families of the deceased of the fate of their loved ones. Second, from a legal standpoint, they aim to uncover legally admissible evidence that will result in the conviction of those responsible for any crimes. Third, they hope to deter future violations by creating awareness, through forensic documentation and subsequent litigation, that those responsible will be held accountable for their actions.

14. The Working Group on Enforced or Involuntary Disappearances and other mechanisms of the Commission on Human Rights have repeatedly stressed that the impunity resulting from inadequate investigations is an important factor contributing to the persistence of human rights violations and to the lack of confidence in the ability or efficiency of national institutions to cope with crimes committed by government forces or groups linked to them. Even when

inquests are ordered by Governments, it is not always easy to ascertain the facts surrounding extrajudicial executions. The remains of victims who had previously disappeared are often found long after their executions took place. This complicates the identification of the body due to the natural decomposition of its soft tissue which erases evidence of trauma such as bruises, gunpowder burns or marks from beatings. In addition, eye-witnesses or other people who could provide evidence are frequently reluctant to do so for fear of reprisals. National mechanisms for the investigation of human rights abuses often fail to obtain conclusive evidence because they lack the necessary cooperation of certain authorities, particularly where the death may have been caused by the police, the army or agents related to them.

B. Forensic training

15. At present, there are very few forensic scientists trained in the newest techniques currently available in this particular field of activity in comparison with the magnitude of disappearances and summary executions which have occurred over the years and which need to be investigated. Thus, the need for more well-trained and experienced forensic scientists is apparent, particularly in countries where these practices occur on a large scale.

16. In response to this need, forensic scientists have organized and conducted training workshops on the application of forensic sciences in conducting human rights investigations in different countries. Local physicians and scientists receive instruction in the exhumation and identification of skeletal remains, collection of antemortem data, autopsy procedures, investigation of allegations of torture, and application of international standards for the medico-legal investigation of suspicious deaths.

17. For a long time, and particularly during the last decade, some non-governmental organizations have been involved in training activities relating to forensic science in different regions of the world. Their courses dealt with modern technology applied to forensic science and with a new multi-disciplinary approach, which requires the participation of professionals from different fields of activity. Examples of this are the training workshops and courses carried out by the AAAS in Argentina in 1985, the Philippines in 1986, Costa Rica in 1989 and Guatemala in 1992; the Argentine Team of Forensic Anthropology in Uruguay in 1988, in Chile in 1989 and 1990, in Bolivia in 1989, Colombia in 1991 and in El Salvador in 1992; and the Danish Committee of Concerned Forensic Scientists and Physicians for the Documentation of Human Rights Abuses in the Philippines and Costa Rica. As a result of such efforts, many more scientists are now able to conduct medico-legal investigations in their home countries. Furthermore, national forensic anthropology teams have even been formed in countries such as Chile, Guatemala and Colombia.

C. International medico-legal standards for investigations

18. In his report to the Commission on Human Rights (E/CN.4/1992/46) the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that violations of the right to life persist in a variety of forms, ranging from isolated cases, through a more systematic pattern favoured by a "hands-off" policy on the part of the authorities, to killings and death threats as a

deliberate state policy which at times touches the limits of war crimes and genocide. While ensuring the rights of the victims of such human rights abuses and their families, the efforts made by the international community to curb the phenomenon of extrajudicial, summary or arbitrary execution in the long term must focus on ways and means of preventing them from taking place. These include a genuine will and effective measures to put into practice the international standards already existing, as well as endeavours to improve them where shortcomings are identified.

19. In view of the need to develop standards for obtaining evidence when ignored or covered up by the authorities, by official forces or by groups tolerated by them, the international community began formulating a set of principles and medico-legal standards for the investigation and prevention of extralegal, summary or arbitrary executions. That work, which started in the early 1980s, made considerable advances with the preparation of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions recommended by the Committee on Crime Prevention and Control at its tenth session in Vienna in 1988. The Principles were adopted by the Economic and Social Council in the annex to its resolution 1989/65, of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989. They are reproduced in the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ST/CSDHA/12).

20. The Manual contains the general principles establishing a standard of investigation and also sets out procedures for the medico-legal investigations of suspicious deaths, an autopsy protocol, and sample charts and diagrams used in reporting injuries. It likewise describes methods for exhuming and examining skeletal remains and detecting post-mortem signs of torture.

21. The preparation of the Manual was greatly facilitated by the Minnesota Lawyers International Human Rights Committee, which obtained the assistance of an international group of experts in forensic science, lawyers, human rights experts and experts in other disciplines in the drafting of the Principles and in following up their implementation, the contents of which constitute the major part of the Manual. The AAAS and the Danish Committee of Concerned Forensic Scientists and Physicians for the Documentation of Human Rights Abuses also had an active participation in the preparation of the Manual.

II. CONSULTATIONS CONDUCTED BY THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES WITH ORGANIZATIONS IN THE FIELD OF FORENSIC SCIENCE AND HUMAN RIGHTS

22. In compliance with Commission on Human Rights resolution 1992/24, in which the Working Group on Enforced or Involuntary Disappearances was requested to render active assistance to the Secretary-General in his consultations with a view to creating, under United Nations auspices, a standing team of forensic experts and experts in other relevant disciplines, the Working Group on Enforced or Involuntary Disappearances assisted the Secretary-General in his consultations with appropriate professional organizations in the field of forensic science. As a starting point for such consultations, the Working Group held meetings with the following four professional organizations known for their involvement in missions for the

exhumation and identification of corpses of probable victims of human rights violations as well as in training activities in this field: the American Association for the Advancement of Science, the Argentine Team of Forensic Anthropology, Physicians for Human Rights and the Committee of Concerned Forensic Scientists and Physicians of the University Institute of Forensic Medicine, Odense (Denmark).

23. The Working Group also contacted the following organizations or groups of experts: the Medical Action Group of Manila; the Mahidol University of Bangkok; the Association of Physicians for Humanism in Seoul; the Chilean Forensic Anthropology Group in Santiago; the Nucleo de Estudos da Violencia of São Paulo University, Brazil; and the Guatemalan Team of Forensic Anthropology.

24. Taking into account the suggestions received from those organizations, the Working Group elaborated a preliminary scheme, containing the following elements:

(a) A list of organizations with confirmed experience in human rights and forensic science will be maintained by the Working Group on Enforced or Involuntary Disappearances;

(b) These organizations will designate experts to work on the relevant activities envisaged by different programmes;

(c) Three types of programmes for forensic activities in relation to human rights can be foreseen: (i) programmes requested by Governments; (ii) programmes initiated at the request of special rapporteurs, working groups or other United Nations organs; (iii) programmes requested by non-governmental organizations. If a programme is requested by a Government, the Working Group will provide it with the names of the organizations listed. In the second case, special rapporteurs, working groups or other United Nations organs will decide, in consultation with the Governments concerned, on the organization that will carry out the forensic activities in connection with their respective mandates. With regard to the third type of programme, non-governmental organizations may inform the Working Group on Enforced or Involuntary Disappearances of their wish to undertake such a programme, indicating the experts or organization they wish to work with. At their request, the Working Group may initiate consultations with the Government concerned. Whenever such consultations have already taken place and an agreement has been reached with national, municipal or other local authorities, the Working Group may take note of the agreement and may recommend the relevant programme to be sponsored by the United Nations, provided that it falls under the terms and spirit of resolution 1992/24;

(d) Sponsorship by the United Nations will not imply any financial involvement in the activities of the programme. It will, however, imply that the programme is considered to respond to the terms of resolution 1992/24 and that the experts and the Government concerned will be committed to respect international human rights standards at all times. The experts will have the legal status of Experts on Mission in accordance with sections 22 and 23 of

article VI of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and will be requested to perform its duties in accordance with general principles governing the activities of such experts.

25. During the first stage of the consultations, the Working Group only addressed organizations or groups specialized in medico-legal or anthropological activities related to forensic science and human rights. The Working Group is, however, aware that, in view of the multidisciplinary nature of these activities, experts in other related disciplines and human rights organizations which promote and sometimes fund such activities or which are involved in several different aspects leading to their accomplishment of forensic work should be contacted as well. Among the international non-governmental organizations, mention should be made of the activities performed in this field by Amnesty International, Human Rights Watch and the Minnesota Lawyers Human Rights Committee, which have been actively involved in the documentation and verification of torture, in the establishment of ethical standards for the medical profession and other professions performing forensic activities and in the exhumation and identification of victims of human rights violations. In addition, some organizations of relatives of victims of human rights violations could provide valuable insight into the technical and practical difficulties encountered when undertaking any kind of forensic activities relating to victims of human rights violations.

26. The Working Group on Enforced or Involuntary Disappearances also included in its report to the Commission on Human Rights information on forensic activities carried out in specific countries in the framework of investigations into cases of disappearances (E/CN.4/1993/25, paras. 50-55, 85, 95, 99-101, 132 and 239).

27. In the conclusions and recommendations formulated in its report, the Working Group included the following:

> "Exhumation and identification of possible victims of human rights violations has proved to be significant in the investigation of cases of disappearances. In compliance with Commission resolution 1992/24, the Working Group has given special attention to the role of forensic experts in this matter. The Working Group will continue to devote its thinking to the topic and expects to receive comments from the Commission on the preliminary scheme which is included in the present report. Consultations will continue during 1993.
>
> "In a number of countries, exhumation and identification of corpses is being carried out by local authorities. In some, the authorities cooperate closely with international forensic teams, an example to be emulated elsewhere. In a few instances, however, forensic teams, whether local or international, have been subjected to reprisals and acts of intimidation. The Working Group expresses its deep concern about this. Any such act is reprehensible as a matter of principle, but in addition the effectiveness of the exercise may be frustrated as a result." (paras. 517-518)

III. RELEVANT ACTIVITIES BY OTHER UNITED NATIONS BODIES

28. In his report to the Commission on Human Rights, the Special Rapporteur on extrajudicial, summary or arbitrary executions made the following specific recommendation:

> "the Special Rapporteur would like to refer to the moves towards the institution of a standing team of forensic experts who could assist special rapporteurs in assessing, among other things, the reasons for the decease of a person purported to be a victim of extrajudicial, summary or arbitrary execution. They may also provide invaluable assistance in the examination of mass graves or clandestine cemeteries. This was shown clearly during the second mission to Yugoslavia in October 1992, in which two forensic experts participated. The Special Rapporteur wishes to encourage the international community to create a team of forensic experts, as was envisaged in Commission on Human Rights resolution 1992/24." (E/CN.4/1993/46, para. 698).

29. In his report on a mission to investigate allegations of mass graves in the territory of the former Yugoslavia, the Special Rapporteur on extrajudicial, summary or arbitrary executions outlined the practical conditions which must prevail before further investigations into those graves are undertaken. He stated that the exploration and excavation of sites as well as the exhumation and examination of bodies require specialists working on a full-time basis for a considerable period of time. Facilities are needed for the examination and conservation of human remains as well as office space, accommodation, transportation, etc. Funds for the remuneration of the experts and to cover all other costs must be made available. Mass graves containing victims of extrajudicial executions must be regarded as the scene of a crime and therefore treated as such. From the very first visit to a grave until the end of the investigation, the site must be protected so as to preserve the evidence. The personal security of the specialists working at the site must be guaranteed. If mass graves are located in areas that are considered as war zones, those guilty of war crimes may still be present, a factor which may generate serious security problems for those involved in the investigations.

30. Under resolution 780 (1992) of the United Nations Security Council an agreement has recently been signed between the United Nations and Physicians for Human Rights, by which the latter will carry out investigations into a mass grave site located near Vukovar, and into similar mass grave sites as may be agreed upon between the parties with a view to providing the Secretary-General with its conclusions on the evidence of serious breaches of the Geneva Conventions of 1949 and other violations of international humanitarian law committed in the territory of the former Yugoslavia. This agreement, with the necessary changes adapting it to the needs of the different situations in which forensic work will be carried out, might be taken as a basis for future agreements in this field. Its text is reproduced in the annex.

IV. CONSIDERATIONS FOR FURTHER ACTIVITIES

31. The Working Group on Enforced or Involuntary Disappearances suggested that a number of steps should still be taken in order to complete consultations on this matter, such as consultations with several non-governmental organizations with extensive experience in the field of human rights and forensic science which so far could not be said to have been held or completed. In addition, relevant special rapporteurs and working groups should be more closely involved in the process of consultation, in particular, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture, as well as special rapporteurs or representatives on country situations.

32. In the light of the practical experience gained, in particular in former Yugoslavia, it also appears necessary to study a number of legal and practical issues in more detail, inter alia: measures to be taken in order to protect the sites where remains of possible victims of human rights violations have been found so that evidence is not removed or interfered with; the question of jurisdiction over the sites and the laws applicable; the authority to which the evidence collected and the report on the investigation will be submitted; agreements to be made with the Governments concerned in relation to the above-mentioned matters and also in relation to the protection of the international and national personnel engaged in the forensic activities. The question of the duties involved in the legal status of "Experts on Mission" acquired by the experts on the basis of their participation in activities under United Nations auspices should also be considered with a view to preparing relevant rules to be observed by experts in the accomplishment of their missions.

33. Those issues, as well as others that may be identified, should be taken into consideration in the process of consultation. This may also imply the elaboration of a model for relevant agreements with the Governments concerned in cases in which they had invited or accepted the visit of a forensic team under United Nations auspices. Last, but not least, consultations should also involve States Members of the United Nations, which should be invited to provide comments on the preliminary scheme submitted by the Working Group on Enforced or Involuntary Disappearances, as noted in chapter II of this report.

Annex

COOPERATION SERVICE AGREEMENT
between
the United Nations
and
Physicians for Human Rights

WHEREAS the United Nations Security Council in its resolution 780 (1992) has requested the Secretary-General to establish an impartial Commission of Experts ("Commission") to examine and analyse the information submitted pursuant to its resolutions 771 and 780 (1992) with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia;

AND WHEREAS the Commission on Human Rights in its resolution S-2/1, adopted at its second Special Session, urges the Commission, with the assistance of the Centre for Human Rights, to arrange for an immediate and urgent investigation by qualified experts of a mass grave near Vukovar and other mass grave sites and places where mass killing are reported to have taken place;

AND WHEREAS Physicians for Human Rights, a Non-Governmental Organization with its Office in Boston, USA, has expressed its willingness to make available its experts to assist the Commission in the investigation of the mass grave near Vukovar and of other mass grave sites;

NOW THEREFORE the United Nations and Physicians for Human Rights (the "Parties") have agreed as follows:

Article I

Duration of the Agreement

The Agreement shall commence on 11 December 1992 and shall, unless earlier terminated by either Party, expire on a date to be agreed upon by the Parties upon completion of the investigation of the mass grave near Vukovar and of such other mass grave sites and places where mass killing are reported to have taken place. The Agreement shall in any event terminate upon conclusion of the work of the Commission.

Article II

Obligations of Physicians for Human Rights

1. Physicians for Human Rights shall make available for the duration and purposes of this Agreement, the experts listed in Annex I hereto (hereinafter called the "Experts"). Changes and modifications to the Annex may be made from time to time by agreement between the Parties.

2. The Experts shall carry out investigations of the mass grave site near Vukovar, and of such other mass grave sites as may be agreed upon between the Parties (hereinafter called the "Investigation"). The Investigation shall be carried out in three phases as described in the plan of action attached hereto as Annex II.

3. The Experts shall submit to the Commission periodical reports on their findings. They shall also provide a final report to the Commission, containing the findings and opinions along with all documentary evidence, if any, upon which such findings were based.

4. Physicians for Human Rights shall make available the Experts for the purposes of this Agreement at no cost to the United Nations, except for the facilities expressly provided for in this Agreement. Physicians for Human Rights shall be responsible for payment of all salaries, subsidies, compensation or benefits to which the Experts might be entitled.

5. Physicians for Human Rights shall ensure that each expert provided under this Agreement is covered by adequate medical and life insurance, as well as insurance coverage for service-incurred illness, injury, disability or death.

6. Except to the extent that such liability is covered by existing UN insurance as the Parties shall agree, the United Nations does not accept any liability for claims for compensation in respect of illness, injury or death arising out of the activities performed under this Agreement.

Article III

Terms and Obligations of Experts

Physicians for Human Rights undertakes to be bound by the terms and obligations specified below, and shall accordingly ensure that the Experts performing services under this Agreement comply with these obligations:

(a) The Experts shall function under the general supervision and control of the Commission;

(b) They shall perform their functions in full complicance with the mandate of the Commission;

(c) They shall not seek nor accept instructions regarding the services to be performed under this Agreement from any Government or other authority external to the United Nations;

(d) They shall refrain from any conduct which would adversely reflect on the United Nations, and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations or the mandate of the Commission;

(e) The Experts shall exercise their utmost discretion in all matters relating to the Investigation and shall not communicate, at any time, without the authorization of the United Nations, to any Institution not party to this Agreement, person, mass media, Government or other authority external to the

United Nations, any information that has not been made public, and which has become known to them by reason of their association with the United Nations. They shall not use any such information without the authorization of the United Nations and in any event, such information shall not be used for individual profit. This obligation does not lapse upon termination of this Agreement with the United Nations.

Article IV

Legal Status of Experts

1. The Experts shall not be considered in any respect as being officials or staff of the United Nations.

2. The Experts shall have the legal status of Experts on Mission in accordance with Sections 22 and 23 of Article VI of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

3. The Experts may be issued a certificate in accordance with Section 26 of Article VII of the Convention.

Article V

Copyrights

The United Nations shall have the copyright in any findings contained in the reports submitted to the Commission in accordance with this Agreement, and in any working papers and other documents prepared by the Experts in connection with the Investigation. In no event shall the contents of such reports or documents be published or otherwise made known by the experts to any unauthorized person, without the written consent of the United Nations.

Article VI

Facilities to be Provided by the United Nations

1. The United Nations shall provide, through its Protection Force (UNPROFOR), such protection as is required by the Experts for the performance of their functions and as is considered necessary by representatives of UNPROFOR.

2. The United Nations shall provide local transportation for the Experts upon their arrival in Croatia and during the conduct of the Investigation.

3. The United Nations shall provide the Experts with interpreters as may be necessary for the carrying out of the Investigation.

Article VII

Consultation

1. The United Nations and Physicians for Human Rights shall consult with each other in respect of any matter(s) that may from time to time arise in connection with this Agreement.

Article VIII

Arbitration

1. Any controversy or claim arising out of, or in connection with this Agreement or any breach thereof, shall, unless it is settled amicably by direct negotiations, be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then in force. Such arbitration shall be conducted under the auspices of the International Chamber of Commerce which shall also serve as the Appointing Authority. The Parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such controversy or claim.

2. Nothing in this Agreement shall be deemed a waiver, expressed or implied, of the privileges and immunities of the United Nations under the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

Article IX

Amendment

This Agreement may be modified or amended only by written agreement between the Parties. Each Party shall give full and sympathetic consideration to any proposal for an amendment made by the other Party.

IN WITNESS THEREOF, the Parties hereto having read and accepted this Agreement have executed it on 11 December 1992.

(Signed)

For the United Nations:
Jacqueline Dauchy
Secretary
Commission of Experts
established pursuant
to Security Council
Resolution 780 (1992)

(Signed)

For Physicians for Human Rights:
Eric Stover
Executive Director